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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

LONE WOLF, ETC., APPELLANTS,
v.
ETHAN ALLEN HITCHCOCK, ETC., APPELLEES.

No. 275.

ON APPEAL FROM THE COURT OF APPEALS OF DISTRICT OF COLUMBIA.

BRIEF OF APPELLEES ON MOTION TO DISMISS APPEAL.

STATEMENT.

By treaties negotiated in 1867 and proclaimed in 1868 (15 Stat., 581, 589), the United States set apart, for the use and occupancy of the Comanche, Kiowa, and Apache tribes of Indians, certain lands then in the Indian Territory and now in the Territory of Oklahoma.

The combined effect of the acts of Congress of June 6, 1900 (31 Stat., 672, 676), January 4, 1901 (31 Stat., 727), and March 3, 1901 (31 Stat., 1093), the validity of which is assailed in the bill of complaint

and in the appellants' brief, was to amend, in such manner as to Congress seemed to be for the best interests of the Indians and the people of the United States, an agreement negotiated with said tribes, ceding to the United States their right of occupancy in the lands in said reservation, to ratify or enact into law the agreement as so amended, and to require and direct that out of the ceded lands allotments in severalty be made to the individual members of said tribes and to the societies engaged in religious and educational work among the Indians; that out of the lands thus ceded 480,000 acres be selected and set aside for the use in common of the Indians as grazing lands; that the ceded territory be divided into new counties and attached to adjoining counties; that the place for county seat of each new county be designated; that there be set aside and reserved, at each of such county seats, 320 acres for a town site; that these town sites be subdivided, platted, and sold at public vendue, and the net proceeds of such sales be applied to the erection of public improvements and the maintenance of county government in the respective new counties; that two additional land districts be established, to include such ceded lands; that the lands remaining after making allotments, etc., be opened to settlement and entry under the homestead and town-site laws by a proclamation of the President, which should prescribe the manner in which such lands could be settled upon and entered during the first sixty days from the time of the opening.

If the acts of Congress assailed by appellants are valid, then, under the act of March 2, 1895 (28 Stat., 976, 899–900), the Territory of Oklahoma was authorized to make selections from the surplus ceded lands to indemnify it for losses in its school-land grant and to satisfy its other grants for educational purposes, such selections to be made after the making of allotments to the Indians and prior to the opening of the lands to settlement.

And if the legislation assailed by appellants is valid, then, by section 24 of the act of March 3, 1891 (26 Stat., 1095, 1103), and the act of June 4, 1897 (30 Stat., 2, 34–36), the President was authorized to put any of the surplus ceded lands, wholly or in part covered with timber or undergrowth, into public forest reserves as a means of securing favorable conditions of water flow and furnishing a continuous supply of timber for the use and necessity of citizens of the United States.

The only purpose of this suit is to restrain and enjoin the defendants, as public officers, from carrying into effect the said acts of Congress of June 6, 1900, January 4, 1901, and March 3, 1901. No temporary restraining order or injunction was allowed.

As shown by the foregoing motion and the accompanying documents, the matters sought to be restrained and enjoined have been accomplished. Since the rendition of the decree in the supreme court of the District of Columbia the allotments in severalty to the Indians and to the religious and other societies have

been completed, and patents have been issued, preparatory to their delivery, to the several allottees; the selection and setting aside of the required 480,000 acres for the use in common of the Indian tribes as grazing lands have been consummated; the work of subdividing, platting, and selling at public vendue the lots in the town sites of the new counties has been completed; the money arising from such sales has been covered into the Treasury of the United States preparatory to its disbursement in the manner directed; a portion of such money has been so disbursed; two additional land districts have been established to include the ceded territory; the Territory of Oklahoma has made selection of portions of the surplus ceded lands under its school and other educational grants, in conformity with the act of March 2, 1895; the President has put into a public forest reserve a part of the surplus ceded lands; the remaining surplus ceded lands were opened to settlement and entry under the homestead and town-site laws on August 6, 1901, pursuant to the President's proclamation of July 4, 1901, and have since been claimed and entered by homestead and town-site claimants, and the purchasers of town lots at the new county seats and their grantees and the homestead and town-site entrymen of other lands number many thousands and are now occupying the lots and lands purchased and entered by them, respectively, and have improved the same at an aggregate cost of millions of dollars.

Congress has recently further legislated respecting the disposition of the moneys arising from the sale of

lots in such town sites (act of June 30, 1902, 32 Stat., 506), and providing for converting homestead entries of these lands into cash entries for town-site purposes in certain cases (act March 11, 1902, 32 Stat., 63), and under this last act many cash entries have been perfected and some have been carried to patent.

The Indians have also petitioned for and received a per capita payment or distribution of a considerable portion of the purchase price stipulated by the agreement amended and ratified by the act of June 6, 1900, to be paid to them by the United States for the lands thereby ceded.

ARGUMENT.

Since the decree in the supreme court of the District of Columbia the status of the lands in controversy and the position of the parties in interest have so far changed that of the things sought to be restrained and enjoined nothing remains undone the doing of which can now be restrained or enjoined in this suit. Under the positive provisions of the acts of Congress recited, if respected by the President, the opening of these lands to settlement and entry could not be postponed beyond August 6, 1901. The President respected these statutes, and the defendants respected and gave effect to the opinion and action of the President. Every matter sought to be restrained and enjoined has been fully consummated, save that most of the homestead entrymen are still required to complete a fourteen months' or five years' residence, as the case may be, upon the lands entered by them and to make payment

therefor as provided in the act of June 6, 1900, before they can receive full title. They have, however, initiated their claims in the manner provided by law, made the requisite payment of fees, obtained recognition of their claims by the officers of the land department, and have entered upon the actual performance of the conditions upon which the Government offers to give them title.

The Indian allottees other than complainants, the religious and educational allottees, the purchasers of lots at the county-seat town-site sales, and the homestead and town-site entrymen are not parties to this suit and are in no manner charged with notice thereof. No statute or principle of law makes a suit instituted in the courts of the District of Columbia against these defendants, respecting lands in Oklahoma, operate as a *lis pendens* against persons such as these. (Wade on Notice, 2d ed., sec. 354; *Carrington* v. *Brents*, 1 McLean, 167, 175; 5 Fed. Cas., 154, 157; *Shelton* v. *Johnson*, 4 Sneed, 672, 682; *Carr* v. *Lewis Coal Co.*, 15 Mo. App., 551, 558; *Carr* v. *Lewis Coal Co.*, 96 Mo., 149, 155.)

A reversal of the decree of the supreme court of the District of Columbia below will not restore any party in interest to the position occupied by him before the accomplishment of the acts sought to be restrained and enjoined. It will not vacate the Indian allotments or those to the religious and educational societies, and will not vacate the town-lot sales or the homestead and town-site entries. It will not operate to remove pur-

chasers of lots or the homestead or town-site entrymen from the lands in controversy, or operate to restore such lands to the possession of the complainants or other Indians. Nor will a reversal of the decree enable said court, by any further proceedings in this suit, to undo that which has been done. The lands and the persons in interest are all in Oklahoma. The allottees, purchasers, and entrymen can not be reached by the process of the court below, and they have now acquired rights which make them indispensable parties to the granting of any relief in this suit. The case of *Litchfield* v. *Register and Receiver* (9 Wall., 575, 578) is directly in point. See, also, *Maese* v. *Hermann* (17 App. D. C., 52, 64), *New Orleans Water Works Co.* v. *New Orleans* (164 U. S., 471, 480), and *California* v. *Southern Pacific Railway Co.* (157 U. S., 229).

The further prosecution of *this* suit, with the possible object of ascertaining or declaring whether these Indian tribes, under the legislation and circumstances narrated, have a claim for money or damages against the United States, will not be permitted (1) because said tribes are not parties to the suit; (2) because the United States is not a party to the suit; (3) because the court has no jurisdiction of suits of that nature, and (4) because it would be an entire departure from the nature of the suit as originally instituted.

It follows that this appeal presents merely a moot question and that no practical result can come from its present decision.

It is established practice to dismiss an appeal when it appears—

1. That since the decision of the lower court the litigation has been compromised or one of the parties has purchased the right or interest of the other in the subject of the suit.

2. That, in obedience to a writ of *mandamus*, the act in question has been performed and can not by a reversal be undone; or that if a writ of *mandamus* has been refused, such a change has occurred since then as renders performance of the act in question impossible.

3. That since a decision refusing an injunction the act sought to be restrained has been performed, so that a reversal will not restore the parties to the position previously occupied by them.

In *United States ex rel. Riker* v. *Carlisle, Secretary of the Treasury*, decided by the court of appeals of the District of Columbia May 16, 1894 (not reported), the relator sought a writ of *mandamus* in the supreme court of the District against the defendant to compel him to award to relator a proposed issuance of $50,000,000 of bonds, or so much thereof as to the court the relator might seem entitled. The writ was refused, and relator appealed. Afterwards, and upon a showing by the defendant that subsequent to the decision of the lower court all of the bonds had been issued to other parties and paid for, and the money deposited in the Treasury, the court of appeals dismissed the appeal.

Donaldson v. *Wright* (7 App. D. C., 45) was a suit by the former against the latter as Commissioner of Labor, assigned to perform the duties of Superintendent of the Census, to restrain him from printing and publishing a certain bulletin relative to the Five Civilized Tribes

of Indians. In the supreme court of the District a decree was rendered for the defendant. Upon consideration of an appeal to the court of appeals it appeared that the act sought to be restrained had been performed. In that connection the court said, in closing its opinion (pp. 62, 63):

> * * * It is also made to appear to this court, by the affidavit of the defendant, that before the filing of the bill the bulletin complained of had been printed and partly distributed, and that, since the decision appealed from, the remaining numbers of the bulletin, with but small exception, have been distributed as directed by the statute;
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> * * * * *
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> * * * even if our conclusions in regard to the rights and remedies of the plaintiff were different from what we have stated them to be, this case would be practically ended, for we could not remand the cause for the granting of an injunction to restrain a public official act that has already been done and accomplished. * * *

The cases of *Cleveland* v. *Chamberlain* (1 Black, 419, 426); *Wood Paper Co.*, v. *Heft* (8 Wall., 333, 336); *Dakota County* v. *Glidden* (113 U. S., 222, 225); *San Mateo County* v. *Southern Pacific R. R. Co.* (116 U. S., 138, 142); *East Tennessee, etc., Railroad Co.* v. *Southern Telephone Co.* (125 U. S., 695, 696); *Little* v. *Brown* (134 U. S., 547, 557, 558); *Linn County* v. *Hewitt* (55 Iowa, 505); *People ex rel. Geer* v. *Common Council of Troy* (82 New York, 575, 576), are illustrative of instances in which an appellate court will dismiss an appeal where it ap-

pears that by reason of matters occurring since the decision of the court below no practical results can follow from a determination by the appellate court of the question presented.

In *Singer Manufacturing Co.* v. *Wright, Comptroller* (141 U. S., 696), it appeared that in a suit to restrain the collection of taxes in which an injunction was denied by the lower court, the complainant, pending the appeal, paid the taxes *under protest and by compulsion.* In sustaining a motion to dismiss the appeal, the court said (p. 700):

> * * * The payment of the taxes was, it is true, made under protest, the complainant declaring at the time that they were illegal, and that it was not liable for them; that the payment was made under compulsion of the writs, and that it intended to demand, sue for, and recover back the amounts paid. If this enforced collection and protest were sufficient to preserve to the complainant the right to proceed for the restitution of the money, upon proof of the illegality of the taxes, such redress must be sought in an action at law. It does not continue in existence the equitable remedy by injunction which was sought in the present suit. The equitable ground for the relief prayed ceased with the payment of the taxes. The appeal must therefore be dismissed.

In *California* v. *San Pablo, etc., Railroad Co.* (149 U. S., 308, 314) the court said:

> The duty of this court, as of every judicial tribunal, is limited to determining rights of per-

> sons or of property which are actually controverted in the particular case before it. When, in determining such rights, it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which can not affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power or affect the duty of the court in this regard.

In *People ex rel. Twenty-third Street Railroad Co.* v. *Squire, Commissioner* (110 N. Y., 666), a writ of *mandamus* was issued by the lower court directing the defendant, as commissioner of public works in the city of New York, to issue a permit to relator for the removal of a pavement. The defendant appealed, but pending the appeal the writ was fully executed and the defendant went out of office. The city of New York, which was not a party to the suit, appeared by counsel and asked the appellate court to proceed to a decision and determine the right of the relator to the writ. The court said (p. 667):

> If the city desires to raise the question of the right of relator to occupy the streets, nothing in this litigation restrains it therefrom, and the decision of the question here would not bind the city. We think, therefore, it is not of any practical importance, and the appeal should not be heard or decided upon its merits.

In re Manning, Mayor of Albany (139 N. Y., 446), a peremptory writ of *mandamus* was issued March 6, 1893, by the supreme court at a special term to compel Manning, as mayor, to publish, as required by the laws of 1892, in the official papers of the city, the list of Democratic inspectors of election and poll clerks appointed by the board of election commissioners to serve at the local election, to be held April 11, 1893, for which registration was to be made March 11, 1893. The mayor appealed, and in September, 1893, the general term reversed the order made at the special term, and the petitioner appealed to the court of appeals. It was urged by him that it was necessary to have the question involved decided, as it would arise again. In dismissing the appeal, the court said:

"The statute requires that inspectors and poll clerks shall be appointed at each election. Their power to perform any official duties expires after the election for which the appointment is made has been held. Any decision, therefore, which we can make on this appeal can have no practical effect. If, for instance, we should reverse the order of the general term and affirm that of the special term, as we are asked to do by the appellant, the latter order could not be enforced, as the election has been held and the time and occasion for the inspectors to act has long since expired.

"The appeal does not now present an actual litigation, but an abstract question. The practice of this court has been to refuse to entertain appeals when it is plain that nothing can be accomplished by the decision.

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"* * * This court has uniformly dismissed the appeal when from lapse of time no decision could be made that would be of any practical effect upon the controversy of the parties.

" The demands of actual practical litigation are too pressing to permit the examination or discussion of academic questions, such as the case in its present situation presents. "

The acceptance by the Indians of the benefits conferred upon them by the act of June 6, 1900, and especially their request for and acceptance of a per capita payment of $130,000 of the purchase price for the ceded lands, is a full acquiescence in the legislation complained of, and effectually precludes them from further questioning its validity. This is amply shown by the authorities cited upon pages 90 to 92, inclusive, of appellees' principal brief herein, as well as by the following authorities:

> Bigelow on Estoppel, 2d ed., 509; *Ferguson* v. *Landram*, 5 Bush (Ky.), 230; *Todd* v. *Kerr*, 42 Barb., 319; *People* v. *Murray* et al., 5 Hill, 468.

It is respectfully submitted that the appeal should be dismissed.

WILLIAM C. POLLOCK,
ANTHONY C. CAMPBELL,
Assistant Attorneys.

WILLIS VAN DEVANTER,
Assistant Attorney-General.

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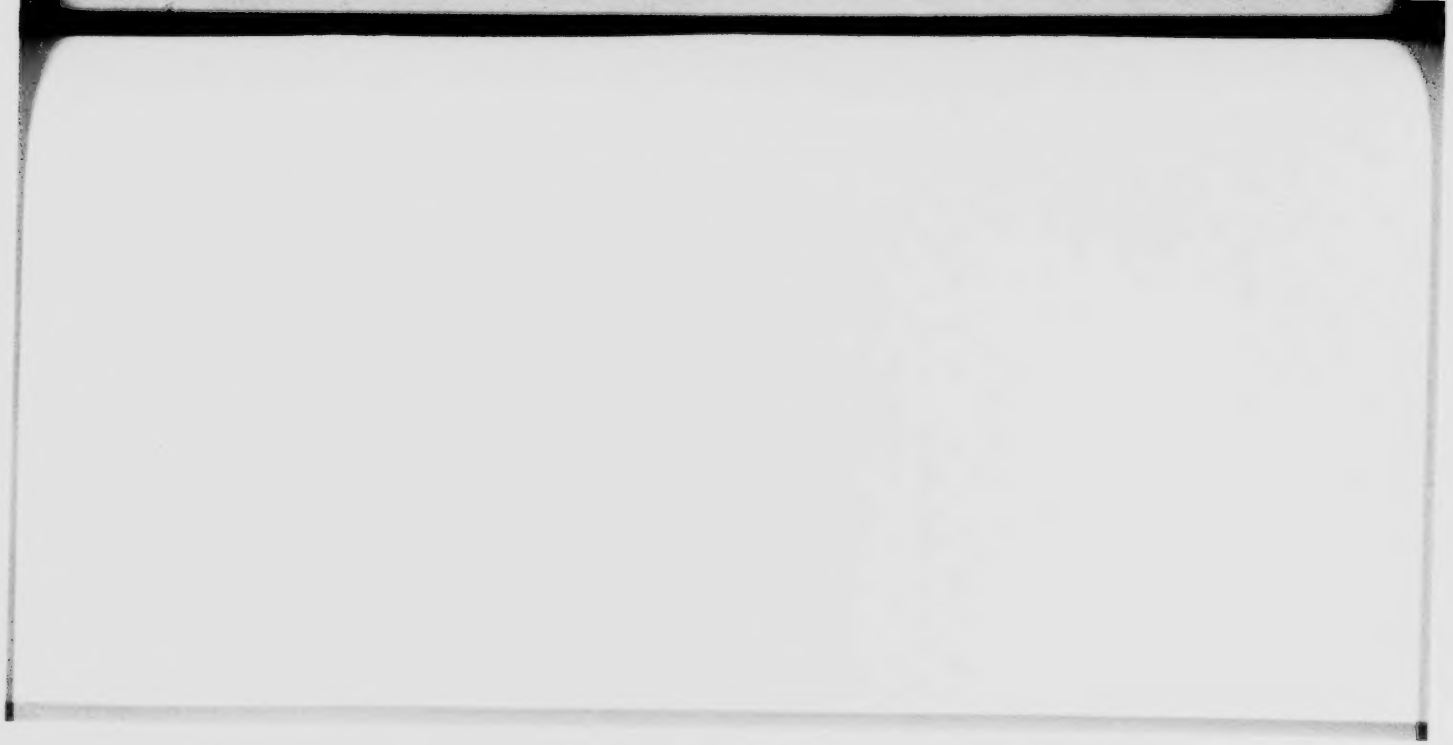

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ARGUMENT IN CASE OF LONE WOLF vs HITCHCOCK,
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56TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 76.

MEMORIAL FROM KIOWA, COMANCHE, AND APACHE INDIAN TRIBES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A COPY OF A MEMORIAL FROM THE KIOWA, COMANCHE, AND APACHE INDIAN TRIBES, PROTESTING AGAINST THE RATIFICATION OF THE AGREEMENT MADE WITH THEM ON OCTOBER 6, 1892, FOR THE CESSION OF THEIR LANDS, NOW PENDING BEFORE THE SENATE; AND ALSO A LETTER FROM THE COMMISSIONER OF INDIAN AFFAIRS RELATIVE TO SAID MEMORIAL.

JANUARY 15, 1900.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 13, 1900.

SIR: Referring to Department report of this date upon Senate resolution of the 14th ultimo, imparting certain information regarding the quantity, nature, and character of the lands of the Kiowa, Comanche, and Apache Reservation, and also as to other matters respecting the Kiowa, Comanche, and Apache Indians, I have the honor to transmit for the further information of the Senate a copy of a memorial from them dated October 9, 1899, protesting against the ratification of the agreement made with them on October 6, 1892, for the cession of their lands, now pending before the Senate, and also a copy of a letter dated the 6th instant, from the Commissioner of Indian Affairs, transmitting and commenting upon the said memorial and the agreement in question, to which the especial attention of the Senate is respectfully invited.

Attention is also invited to the provision in the agreement of 1892 for allotments to the members of the tribes, each member thereof being entitled to 160 acres, "at least one-half" of which shall be grazing land. (See Senate Ex. Doc. No. 17, Fifty-second Congress, second session.) Upon this basis, taking the number of Indians (2,872) now reported to be upon the reservation, 229,760 acres of agricultural lands would be required to make allotments. With but 79,340 acres of such land in the entire reservation—an average of less than 30 acres per head—it can be readily seen how impossible it will be to carry the agreement into effect, if ratified by the Congress.

Attention is also invited to the further fact that provision is also made in the agreement for allotments of 160 acres each to George D. Day and Hugh L. Scott. Mr. Day was the agent for the Indians at the time the agreement was made and Mr. Scott was an officer of the Army and then stationed at Fort Sill, in the reservation. In view of the relations which they sustained to the Indians and the public service, I regard the concessions to them as of singular import and doubtful propriety.

The Indians have almost from the date of the execution of the agreement protested that the matter was misrepresented to them by their interpreters. Whether they were influenced by willful misrepresentation or false translations to sign it or not, they believed they were so imposed upon.

The agreement purports to have been signed by 456 male adult members of the tribes over the age of 21 years, and the agent, Mr. Day, certified that there were 562 male adult members of the tribes constituting the parties to the agreement. Therefore the number who are alleged to have signed the agreement was made to appear to constitute more than three-fourths of the entire adult male membership of the tribes.

No census of these Indians was taken in 1892, but from a roll prepared about the time the agreement was made, or shortly after, which was used in making a payment to them in January and February, 1893 (three to four months after the date of the agreement), it appears that there were 725 males over the age of 18 years, of whom 639 were 21 years and over.

If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number who actually signed was 87 less than three-fourths of the adult male membership; and if 21 years be held to be the minimum age, then 23 less than three-fourths signed the agreement. In either event, less than three-fourths of the male adults appear to have so signed. (See Senate Ex. Doc. No. 84, Fifty-fifth Congress, third session.)

It therefore seems that besides willful misrepresentation and false translations to the Indians, as charged, to influence their action and induce them to sign the agreement, that the Department was also misled as to the actual number of adult male Indians in the tribes, and that it was led to believe by the certificate of the agent in charge that the number of those who did sign comprised more than three-fourths of the adult male membership of the tribes, whether 18 years or 21 years be taken as the proper age of signers to give legal effect to the agreement.

The significance of this is found in the twelfth article of the treaty of 1868, which precludes a less number than three-fourths of the adult male members of the tribes from ceding their lands, the language of the treaty being as follows:

> ARTICLE XII. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, * * * (15 Statutes, 585).

Therefore, because of the inadequacy of the allotments proposed by the agreement to provide support for the Indians by stock raising, which must become their principal industry, and of the improper allotments to Messrs. Scott and Day, and the apparently improper practices in procuring the agreement and false certification as to the signers thereof, I am of the opinion that it should not be ratified. And there

are other reasons for its rejection, equally as potent, which are pointed out by the Commissioner of Indian Affairs in the inclosed copy of his letter of the 5th instant, which have a direct bearing upon the money considerations proposed by the agreement for the benefit of the Indians, which appear to fail to provide proper compensation for the lands ceded.

The attention of the Senate is especially invited to these provisions and the comments thereon by the Commissioner.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 5, 1900.

SIR: This office is in receipt of a communication from Lieut. Col. J. F. Randlett, Indian agent in charge of the Kiowa Agency, Okla., dated December 18, 1899, in which he incloses a memorial from the Kiowas, Comanches, and Apaches, prepared by himself upon request of the chiefs and head men of the tribes. He states that the language is his own, but conforms in every respect to the request of the Indians, as expressed to him through interpreters, and that it was submitted to a general council of all the Indians of the tribes interested, at which council nearly every adult male was present.

He adds that he has no hesitancy in certifying that the document is genuine in every respect, and is the true expression of all whose names are thereto attached.

He also forwards a copy of the names signed to the memorial, with the certificate of the interpreter and agent, the original being filed in the records of the Kiowa Agency.

The memorialists pray that the so-called Jerome treaty, made in September, 1892, may not be ratified by Congress, because those who signed the treaty were misled by those who represented the Government through the interpreters employed by the commissioners appointed to treat with them; that these interpreters led them to believe that if they did not sign the treaty their lands would be taken from them under the provisions of the Dawes law, then in existence, which would be very much more unfavorable to them than was provided in the proposed treaty they were asked to accept; that it was from this assurance, and for no other reason, that they signed the treaty; that this was impressed upon them by their agent at the time, who claimed that he was their best friend, and that if they adopted him into the tribe he was coming to live with them as one of their people, his interests and theirs being alike, and that to sign the treaty would save them from being forced to accept, under the other law, a less number of acres by allotment than they would be given by the terms of the proposed treaty.

They declare that each and every one who signed the treaty would never have signed it if they had not been deceived; that they were not allowed to have any counsel to advise them what was best for them to do, the white people who were on the reservatien being threatened with ejection should they in any way give advice contrary to that given by the commissioners who represented the Government through the interpreters employed by said commissioners; that there are white

men of good repute now living on their reservation by permission of the Indian Department who know this to be true and will make affidavit to the facts that they were threatened with ejectment if they did not advise the Indians to sign the treaty as it was presented to them by the commission; that they now realize that if the treaty is ratified they are doomed to destruction as a people and brought to the same impoverished condition to which the Cheyenne and Arapahoe and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them; that their lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle; that all of it they do not need for their own use as homes and grazing their own stock is open for leasing to people who are engaged in the cattle-raising industry of the the country, and that the general public as well as themselves derive more benefit from this condition than would be derived were their lands thrown open for settlement by people who want it for homesteads; that from the lands they now have leased they are enabled to procure many of the comforts of life; that if this revenue is taken from them at this time it will stop the progress they are making in ways of civilization, and blight the hopes they have entertained that the Government would continue to protect their interests until they were fitted to compete with the white man in civilized ways for self support.

They submit that the provisions for lands to be allotted them under treaty are insufficient, because it is evident that they can not, on account of the climate which renders the maturity of crops uncertain, become a successful farming community; and that they, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support.

They therefore pray that if they can not be granted the privilege of keeping their reservation under the treaty made with them in 1868, authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to them sufficient to graze upon it enough stock cattle, the increase from which they can market for the support of themselves and families.

The number of signatures to this memorial is 571.

The agreement with the Kiowa Indians has been pending before Congress since 1892. A bill to ratify and confirm said agreement has been introduced in both the House and Senate at the present session. (H. R. 905; S. 1352.)

The former bill provides for the ratification of the agreement with certain amendments. The latter ratifies the bill with amendments similar in effect, which amendments are written into the agreement. Neither of the bills contains any provision for submitting the amendments to the Indians for their acceptance or rejection.

The preamble of the Senate bill recites that—

> Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, duly appointed commissioners on the part of the United States, did, on the sixth day of October, eighteen hundred and ninety-two, conclude an agreement with the Comanche, Kiowa, and Apache tribes of Indians in Oklahoma, formerly a part of the Indian Territory, which said agreement, *as amended by this act*, is in words and figures as follows.

This title is misleading, inasmuch as it is not an act to ratify and confirm an agreement, but to *amend* an agreement, without the consent of one of the contracting parties thereto.

It is certainly a novel proposition in law that one party to an agreement may, without the consent of the other, alter or modify an essen-

tial part of such contract. It is apparent that no court of law would uphold or enforce any contract so altered or amended.

In all our dealings with the Indian tribes I do not find that any agreement has ever been "amended" by the Congress without providing for the assent of the Indians interested. In one or possibly two cases Congress has entirely ignored an agreement for the cession of lands upon the ground that the Indians, parties thereto, were not the owners of the lands ceded, but it has never attempted to write in new and different words in a signed agreement without providing that the amendment should be open to rejection or adoption by the Indians interested.

A number of cases are found in the statutes where agreements have been so amended, but in every case provision has been made for resubmitting the agreement as amended for the consideration of the Indians. I mention three such cases:

In ratifying the amendment made by Commissioners John V. Wright, Jared W. Daniels, and Charles F. Larrabee on behalf of the United States with the Indians of the Fort Berthold Agency, Congress amended article 6 of said agreement and provided that—

> This act shall take effect only upon the acceptance of the modification and changes made by the United States as to article 6 of the said agreement by the said tribe of Indians in manner and form as said agreement was assented to, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that said acceptance and consent have been obtained in such manner and form. (26 Stats., 1035.)

The agreement between the commissioners on behalf of the United States and the Cherokee Nation, concluded December 19, 1891, which provided for the cession by the said nation to the United States of all the lands known as the "Cherokee Outlet," was ratified with amendments. (27 Stats., 641.)

To provide against the possible contention that the amended agreement was not the contract consented to by the Cherokee Nation, Congress provided—

> That the acceptance by the Cherokee Nation of Indians of any of the money appropriated as herein set forth shall be considered and taken and shall operate as a ratification by said Cherokee Nation of Indians of said agreement as it is hereby proposed to be amended, and as a full and complete relinquishment and extinguishment of all their title, claim, and interest in and to said lands.

As a matter of fact the amendments proposed by Congress in the act of March 3, 1893, were formally concurred in by the Cherokee Nation on April 3, 1893.

The agreement with the Shoshone and Arapahoe tribes of Indians in Wyoming was ratified by section 12 of the act of June 7, 1897 (30 Stats., 93), which section commences as follows:

> That the following amended agreement with the Shoshone and Arapahoe tribes of Indians in the State of Wyoming is hereby accepted, ratified, and confirmed and shall be binding upon said Indians when they shall in the usual manner agree to the amendment herein made thereto.

A further examination of the statutes shows that prior to 1873, when the relations of the Government and the Indian tribes were under treaties, all amendments made by the Senate to treaties presented by the Executive for its consideration were submitted to the Indians for their concurrence before they were deemed to be in effect, and it does not appear anywhere in the statutes, so far as this office has been able to ascertain, that this Government has assumed the authority to change or amend a treaty or agreement with an Indian tribe and to put the

amended or changed agreement or treaty into effect without the consent of the tribe interested.

The sixth article of the agreement signed by the Comanche, etc., Indians, provides as follows:

As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Two hundred thousand ($200,000) dollars in cash, to be distributed per capita among the members of said tribes, within one hundred and twenty (120) days after this agreement shall be ratified by the Congress of the United States; two hundred thousand ($200,000) dollars to be paid out to said Indians under the direction of the Secretary of the Interior in one year after said first payment, and one hundred thousand ($100,000) dollars in the same manner in one year from date of second payment, and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to said Indians per capita annually.

The "amended agreement" provides as follows:

As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of *not exceeding* two million ($2,000,000) dollars, in manner as follows:

As fast as the lands opened for settlement under this act are sold, the money received from such sales shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians: *Provided*, That no part of said money shall be paid to said Indians until the question of title to the said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims, as hereinafter provided, and said court shall by its decree direct the payment of said two millions of dollars to the tribes entitled to the same, as herein provided.

If it were within the constitutional power of Congress and in accordance w th law and equity to thus amend an agreement, I should strongly object to the above modification, for three reasons:

First. It is a matter of great uncertainty when, if ever, the Indians will receive any compensation for their lands.

By the laws under which they are to be opened settlers are required to pay $1.50 per acre within five years from date of original entry, one-half of which is to be paid within two years.

The Cheyenne and Arapahoe lands were opened to settlement under the same terms something over seven years ago, and not one dollar has yet been paid therefor, as appears from a recent statement of the General Land Office. By the act of July 1, 1898, the time of payment has been extended to July 1, 1900, and the indications are very strong that no payment will ever be made.

Practically the lands are to be taken without consideration.

Second. If the lands *are* paid for there is no certainty that the Comanche, etc., Indians will ever receive one cent.

Should the Supreme Court follow the construction of the Choctaw and Chickasaw treaty adopted by Congress after full deliberation and careful consideration, invoked by the earnest appeal of President Harrison to reconsider its action in directing payment to these nations, as has been done by the Court of Claims as to the Wichita Reservation, the entire $2,000,000 must be paid to the Choctaws and Chickasaws.

But the *rights* of the Comanches, etc., are in no way dependent upon the rights of other tribes.

By the second article of the treaty of October 21, 1867 (15 Stats., 581), the United States agreed that the district of country therein described (as in the agreement) should be set apart for the absolute and

undisturbed use and occupation of the Kiowas and Comanches, and for such other friendly tribes or individual Indians as from time to time they might be willing to admit among them.

By another treaty concluded on the same day (id., 589) with the Kiowas and Comanches, and the Apaches, the latter tribe agreed to be incorporated with the Kiowas and Comanches, who agreed that the Apaches should share in all the benefits of their treaty (first above named).

In the case of the United States *v.* Cook (19 Wall., 591) the Supreme Court held that the right of the Indians to their occupancy is as sacred as that of the United States to the fee, and it was this title that was guaranteed to these Indians by the above treaty. If the United States did not have clear title by which it could convey the right of occupancy to the Indians, it must clear the title in order that it may do so. When the Indians are called upon to part with the sacred right of occupancy, their compensation is in no manner dependent upon the preexisting rights of other parties.

If the United States owes the Choctaws and Chickasaws any amount for these lands, it must pay them; and also the Comanches, etc., for their surrender.

Especially is this so, as it is not claimed or pretended that any amount is due the former so long as the occupancy of the latter continues.

If it should be claimed that Congress has the right to repeal the treaty, the reply is that this right exists only as to cases purely political. It is equally true that Congress has no constitutional power to settle or interfere with rights under treaties, except in such cases. (See Holden *v.* Joy, 17 Wall., 247, and authorities therein cited.) This is distinctly recognized in the Chinese exclusion cases. (130 U. S., 609.)

Third. The "agreement" as amended makes no provision for the payment of the principal or interest to the Indians, except that the court shall by its decree direct the payment of said $2,000,000 to the tribes entitled to the same.

The manner of payment is left in uncertainty.

The act contains a provision (section 6) that should any of the lands allotted to the Indians contain valuable mineral deposits, such deposits shall be open to location and entry under the existing mining laws of the United States, but makes no provision for the allotment of other lands in lieu of those so located, nor for other compensation for such lands.

Even if it be constitutional I do not believe it would be either just or equitable to take away from an allottee the whole or any part of the land which the United States agrees to hold for his exclusive use and benefit, without compensation.

It is of course recognized that the United States does not intend to convey mineral deposits to an allottee, and allots no land known to contain such deposits, but by the subsequent discovery of minerals and their opening to location and entry the allottee is deprived of the use of the land for the purpose for which it was allotted.

I can see no justice in placing the sums received from the sale of such allotted mineral lands to the credit of the Indian tribes, and leaving the allottee without land or other compensation than such as he would possibly receive as his pro rata share of the tribal funds, and which would not be increased by the sale of his entire allotment, the maximum compensation being limited to $2,000,000.

As before remarked, this agreement has been pending for more than six years. In the interest of all concerned it should be finally disposed

of during the present session of Congress. If an amendment be inserted in either of the pending bills, submitting the amended agreement for the acceptance or the rejection of the Indians, or if it should be concluded that it would be the duty of the Department, in case either of the bills should pass in their present form, to submit the matter for consent or rejection by the Indians, I should have no objection to its passage, and am of the opinion that the matter would thus receive final disposition.

In case the amended agreement should be rejected by the Indians, as seems most probable, further negotiations could be had with them, and no doubt an agreement obtained which would be fair to them as well as to the United States.

As shown in office report of December 23, 1899, upon the resolution of the Senate calling for certain information in regard to the Kiowa Reservation, the lands of said reservation are not adapted to agricultural purposes, and should be allotted to the Indians in larger quantities than is provided for in the present agreement.

Although this office has not hitherto definitely opposed the ratification of the agreement in its present form, the result of the investigation made by Special Agent Pray and Agent Randlett is such as to lead it to conclude that the agreement ought not to be ratified. I am therefore of the opinion that the agreement should be rejected by Congress, or that it be ratified with the proposed amendments and submitted to the Indians for their acceptance or rejection.

Two copies of the memorial are herewith transmitted (the signatures being omitted), with the recommendation that they be forwarded to the Senate and House Committees on Indian Affairs with a copy of this report.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

The SECRETARY OF THE INTERIOR.

KIOWA, COMANCHE, AND APACHE RESERVATION,
Mount Scott, Okla., October 9, 1899.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.:

We, the adult male members of the Kiowa, Comanche, and Apache Indian tribes now residing on our reservation in the Oklahoma Territory, beg that the honorable the Commissioner of Indian Affairs will approve this our petition and have it presented to the Committees of Indian Affairs of both Houses of Congress.

We pray that the so-called Jerome treaty, made with our people in September, 1892, may not be ratified by Congress, because that those of us who signed that treaty were misled by those who represented the Government through the interpreters employed by the commissioners appointed to treat with us. These interpreters led us into the belief that if we did not sign said treaty, our lands would be taken from us under the provisions of a law called the Dawes law, then in existence, which would be very much more unfavorable to us than was provided for us in the proposed treaty we were asked to accept, and it was from this assurance and for no other reason that we signed said treaty. This was impressed upon us by our agent at that time, who claimed he was our best friend, and if we adopted him into our tribe he was com-

ing to live with us as one of our people, and that his interests and ours were alike, and that to sign the treaty would save us from being forced to accept under the other law a less number of acres by allotment than we would be given by the terms of the proposed treaty.

Therefore, each and every one of us who signed that treaty do solemnly declare that if we had not been deceived we would never have signed it. We were not allowed to have any counsel to advise us what was best for us to do, and the white people who were on the reservation at that time were threatened with ejection should they, in any way, give us advice contrary to that which we received from the commissioners who represented the Government through the interpreters employed by said commissioners. There are white men of good repute now living on our reservation, by permission of the Indian Department at Washington, who know this to be true, and will make affidavit to the fact that they were threatened with ejectment if they did not advise us to sign the treaty as it was presented to us by the members of the Jerome Commission.

We now realize that if this treaty is ratified we are doomed to destruction as a people and brought to the same impoverished condition to which the Cheyenne and Arapahoe and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them. We submit that our lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle, and that all of it we do not need for our use as homes and grazing our own stock is open for leasing to people engaged in the cattle raising industry of the country, and that the general public, as well as ourselves, derive more benefit from this condition than would be derived were our lands thrown open for settlement by people who want it for homesteads. From the lands we now have leased we are deriving a revenue that enables us to procure many of the comforts of life; if this revenue is taken from us at this time, it will stop the progress we are making in ways of civilization and blight the hopes we have entertained that the Government would continue to protect our interests until we were fitted to compete with the white man in civilized ways for self-support.

We submit that the provision for lands to be allotted to us under this treaty are insufficient, because it is evident we can not, on account of the climate of our section, which renders the maturity of crops uncertain, become a successful farming community; that we, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support. And we therefore pray, if we can not be granted the privilege of keeping our reservation under the treaty made with us in 1868, and known as the Medicine Lodge treaty, that authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to us sufficient for us to graze upon it enough stock cattle the increase from which we can market for support of ourselves and families.

As evidence that this statement is true regarding the inadaptability of the lands of Oklahoma for farming industry, we ask consideration of the fact that to-day there are 6,338,363 acres of land in the Territory, outside of our reservation awaiting entry from people seeking homesteads.

In conclusion, we beg consideration of the fact that we have kept faith with the Government as pledged in the treaty ratified July 25, 1868, and, as a people, we are obedient to the laws of the land; that we are not drunkards, nor do we molest the property of the whites who

have located on lands adjoining ours. We have placed our children in schools provided by the Government and Christian societies; that the several schools, having a capacity for 700 pupils, are kept filled with our children, and that we point to these facts as evidence that we are striving in the right way to fit our people for the day we realize must come, when their children will be dependent upon their own intelligence and physical strength for the support of themselves and their kindred.

We therefore pray that for the reasons we have given herein we may be heard in this, our repudiation of the Jerome treaty, and that Congress will cast it out and not accept it as our free act and deed.

KIOWA AGENCY,
Anadarko, Okla., December 18, 1899.

Interpreter's certificate.

I certify upon honor that I was present at a general council of the Indians of the Kiowa, Comanche, and Apache tribes of the Kiowa, etc., Agency, Okla., held at Mount Scott, Apache, Kiowa and Comanche Indian Reservation, Okla., October 9, 1899, and that the foregoing memorial was adopted and duly signed by all the Indians whose names are attached thereto; that the signatures were attached after the subject of the memorial was duly discussed and understood by all the Indians interested, and that each and every one signed of his own free will with full knowledge of the purport of his act.

OTTO WELLS,
Official Interpreter.

Agent's certificate.

I, James F. Randlett, lieutenant-colonel, U. S. A., United States Indian agent for the Kiowa, etc., Agency, Okla., certify upon honor that the facts stated in the foregoing "Interpreter's certificate" are true.

JAMES F. RANDLETT,
Lieutenant-Colonel, U. S. A., United States Indian Agent.

30195

55TH CONGRESS, 3d Session. SENATE. DOCUMENT No. 84.

NUMBER OF ADULT MALE INDIANS BELONGING TO THE KIOWA, COMANCHE, AND APACHE TRIBES IN OCTOBER, 1892.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN RESPONSE TO

RESOLUTION OF THE SENATE OF JANUARY 25, 1899, CALLING FOR NUMBER OF ADULT MALE INDIANS BELONGING TO THE KIOWA, COMANCHE, AND APACHE TRIBES IN OCTOBER, 1892.

JANUARY 28, 1899.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 28, 1899.

SIR: I have the honor to be in receipt of the following Senate resolution of the 25th instant:

"*Resolved*, That the Secretary of the Interior is hereby directed to inform the Senate, from the records of his Department, what was the total number of adult male Indians belonging to the Kiowa, Comanche, and Apache tribes of Indians in October, eighteen hundred and ninety-two, and whether the signatures attached to the agreement made with said Indians at said date comprises three-fourths of such adult males of said tribes.

The records of the department fail to show a census of these Indians for the year 1892.

From a roll used in making a payment to them in January and February, 1893, it appears that there were 725 males over 18 years of age, of whom 639 were 21 years and over.

Article 2 of the agreement of 1892 provided that "each member of the said Comanche, Kiowa, and Apache tribes of Indians over eighteen years of age shall have the right to select for himself or herself one hundred and sixty (160) acres of land, to be held and owned in severalty, * * *."

It appears that 456 Indians signed the agreement in question.

If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number of persons who actually signed was 87 less than three-fourths of the adult male membership of the tribes; and if 21 years be held to be the minimum age, then 23 less

than three-fourths signed the agreement. In either event, less than three fourths of the male adults appear to have so signed.

I transmit a copy of a report on the subject from the Commissioner of Indian Affairs, dated the 27th instant.

Very respectfully,

C. N. BLISS, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 27, 1899.

SIR: I have the honor to acknowledge the receipt, by your reference of the 25th instant, for immediate report, in duplicate, of Senate resolution calling for information as to the total number of adult male Indians belonging to the Kiowa, Comanche, and Apache tribes in October, 1892, etc.

In reply, I have the honor to state that there is no census roll of these Indians for the year 1892 on file in this office. The best information this office can furnish in the matter is obtained from a pay roll containing the names of the Indians belonging to the said tribes, paid in January and February, 1893, and which shows 639 males 21 years of age and over and 725 males 18 years of age and over.

It appears from the records that 456 Indians signed the agreement for the cession of certain lands in the Territory of Oklahoma.

Article 2 of the said agreement provides "* * * that each member of the said Comanche, Kiowa, and Apache tribes of Indians over the age of eighteen (18) years shall have the right to select for himself or herself one hundred and sixty (160) acres of land, to be held and owned in severalty, * * *."

If 21 is to considered the legal age, the records show that the 456 Indians who signed the agreement were 23 less than three fourths of the 639 males 21 years of age and over, as shown by the pay rolls. If 18 is to be considered the legal age, as provided in article 2 of the agreement, the records show that the 456 Indians who signed the agreement were 87 less than three fourths of the 725 males 18 years of age and over, as shown by the pay roll.

The certificate of Mr. George D. Day, United States Indian agent in charge of Kiowa Agency (p. 23, vol. 44, Miscellaneous Indian Documents, Fifty-second Congress, second session), under date of October 21, 1892, gives the number of adult male Indians at that time as 562. There is, however, no information obtainable from the files of this office by which the certificate of Mr. Day can be verified.

The paper inclosed with your letter is herewith returned, as requested.

Very respectfully,

W. A. JONES,
Commissioner.

The SECRETARY OF THE INTERIOR.

56TH CONGRESS, 1st Session. HOUSE OF REPRESENTATIVES. DOCUMENT No. 333.

MEMORIAL FROM KIOWA, COMANCHE, AND APACHE INDIAN TRIBES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A COPY OF A MEMORIAL FROM THE KIOWA, COMANCHE, AND APACHE INDIANS, ENTERING A PROTEST AGAINST THE RATIFICATION OF AN AGREEMENT FOR THE CESSION OF THEIR LANDS.

JANUARY 23, 1900.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 22, 1900.

SIR: I have the honor to transmit for the information of the House of Representatives a copy of a memorial from the Kiowa, Comanche, and Apache Indians, dated October 9, 1899, entering a protest against the ratification of the agreement made with them on October 6, 1892, for the cession of their lands, which agreement is pending before the Congress.

In transmitting a copy of this memorial to the Senate, on the 13th instant, attention was invited to the provision in the aforesaid agreement of 1892 for allotments to the members of the tribes, whereby each member thereof was declared to be entitled to 160 acres, "at least one-half" of which shall be grazing land (Senate Ex. Doc. No. 17, Fifty-second Congress, second session), and to the fact that upon the basis of the number of Indians (2,872) reported to be upon the reservation 229,760 acres would be required to make allotments; also that as but 79,340 acres of such lands are reported upon the entire reservation, an average of less than 30 acres per head, it could be readily seen how impossible it will be to carry the agreement into effect if ratified by the Congress.

Attention was also called to the fact that provision was made in the agreement for allotments of 160 acres each to George D. Day and Hugh L. Scott, Mr. Day being the agent for the Indians at the time the agreement was made and Mr. Scott an officer of the Army, then stationed at Fort Sill on the reservation, and the opinion expressed that, in view

of the relations which they sustained to the Indians and the public service, the concessions to them were of doubtful propriety.

Other matters relating to the Indians and to the execution of the agreement of 1892 were discussed, which are of such especial importance to them and have such direct bearing upon the questions under consideration that I deem it proper to repeat the following from my communication of the 13th instant to the Senate and to renew the recommendation made to that body:

The Indians have, almost from the date of the execution of the agreement, protested that the matter was misrepresented to them by their interpreters. Whether they were influenced by wilful misrepresentation or false translations to sign it or not, they believe they were so imposed upon.

The agreement purports to have been signed by 456 male adult members of the tribes, over the age of 21 years, and the agent, Mr. Day, certified that there were 562 male adult members of the tribes constituting the parties to the agreement. Therefore the number who are alleged to have signed the agreement was made to appear to constitute more than three-fourths of the entire adult male membership of the tribes.

No census of these Indians was taken in 1892, but from a roll prepared about the time the agreement was made, or shortly after, which was used in making a payment to them in January and February, 1893 (three to four months after the date of the agreement), it appears that there were 725 males over the age of 18 years, of whom 639 were 21 years and over.

If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number who actually signed was 87 less than three-fourths of the adult male membership; and if 21 years be held to be the minimum age, then 23 less than three-fourths signed the agreement. In either event, less than three-fourths of the male adults appear to have so signed. (See Senate Ex. Doc. No. 81, Fifty-fifth Congress, third session.)

It therefore seems that besides willful misrepresentation and false translations to the Indians, as charged, to influence their action and induce them to sign the agreement, that the Department was also misled as to the actual number of adult male Indians in the tribes, and that it was led to believe by the certificate of the agent in charge that the number of those who did sign comprised more than three-fourths of the adult male membership of the tribes, whether 18 years or 21 years be taken as the proper age of signers to give legal effect to the agreement.

The significance of this is found in the twelfth article of the treaty of 1868, which precludes a less number than three-fourths of the adult male members of the tribes from ceding their lands, the language of the treaty being as follows:

"ARTICLE XII. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, * * * (15 Stats., 585)."

Therefore, because of the inadequacy of the allotments proposed by the agreement to provide support for the Indians by stock raising, which must become their principal industry, and of the improper allotments to Messrs. Scott & Day, and the apparently improper practices in procuring the agreement and false certification as to the signers thereof, I am of the opinion that it should not be ratified. And there are other reasons for its rejection, equally as potent, which are pointed out by the Commissioner of Indian Affairs in the inclosed copy of his letter of the 5th instant, which have a direct bearing upon the money considerations proposed by the agreement for the benefit of the Indians, which appear to fail to provide proper compensation for the lands ceded.

A further report was made to the Senate on the same date in answer to its resolution of December 14, 1899, calling for certain information regarding the quantity, nature, and character of the lands of the Kiowa, Comanche, and Apache Reservation, to which attention is invited (Senate Doc. No. 75, Fifty-sixth Congress, first session), as well as to the inclosed copy of a letter from the Commissioner of Indian Affairs, dated the 5th instant, which deserves serious consideration.

Very respectfully,

E. A. HITCHCOCK,
Secretary

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 5, 1900.

SIR: This office is in receipt of a communication from Lieut. Col. J. F. Randlett, Indian agent in charge of the Kiowa Agency, Okla., dated December 18, 1899, in which he incloses a memorial from the Kiowas, Comanches, and Apaches, prepared by himself upon request of the chiefs and headmen of the tribes. He states that the language is his own, but conforms in every respect to the request of the Indians, as expressed to him through interpreters, and that it was submitted to a general council of all the Indians of the tribes interested, at which council nearly every adult male was present.

He adds that he has no hesitancy in certifying that the document is genuine in every respect and is the true expression of all whose names are thereto attached.

He also forwards a copy of the names signed to the memorial, with the certificate of the interpreter and agent, the original being filed in the records of the Kiowa Agency.

The memorialists pray that the so-called Jerome treaty, made in September, 1892, may not be ratified by Congress because those who signed the treaty were misled by those who represented the Government through the interpreters employed by the Commissioners appointed to treat with them; that these interpreters led them to believe that if they did not sign the treaty their lands would be taken from them under the provisions of the Dawes law, then in existence, which would be very much more unfavorable to them than was provided in the proposed treaty they were asked to accept; that it was from this assurance, and for no other reason, that they signed the treaty; that this was impressed upon them by their agent at the time, who claimed that he was their best friend, and that if they adopted him into the tribe he was coming to live with them as one of their people, his interests and theirs being alike, and that to sign the treaty would save them from being forced to accept, under the other law, a less number of acres by allotment than they would be given by the terms of the proposed treaty.

They declare that each and every one who signed the treaty would never have signed it if they had not been deceived; that they were not allowed to have any counsel to advise them what was best for them to do, the white people who were on the reservation being threatened with ejection should they in any way give advice contrary to that given by the Commissioners who represented the Government through the interpreters employed by said Commissioners; that there are white men of good repute now living on their reservation by permission of the Indian Department who know this to be true and will make affidavit to the facts that they were threatened with ejectment if they did not advise the Indians to sign the treaty as it was presented to them by the commission; that they now realize that if the treaty is ratified they are doomed to destruction as a people, and brought to the same impoverished condition to which the Cheyenne and Arapaho and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them; that their lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle; that all of it they do not need for their own use as homes and grazing their own stock is open for leasing to people who are engaged in the cattle-raising industry of the country, and that the general public as well as themselves derive more benefit from this condition than would be derived were their lands thrown open for

settlement by people who want it for homesteads; that from the lands they now have leased they are enabled to procure many of the comforts of life; that if this revenue is taken from them at this time it will stop the progress they are making in ways of civilization, and blight the hopes they have entertained that the Government would continue to protect their interests until they were fitted to compete with the white man in civilized ways for self-support.

They submit that the provisions for lands to be allotted them under treaty are insufficient, because it is evident that they can not, on account of the climate which renders the maturity of crops uncertain, become a successful farming community, and that they, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support.

They therefore pray that if they can not be granted the privilege of keeping their reservation under the treaty made with them in 1868, authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to them sufficient to graze upon it enough stock cattle the increase from which they can market for the support of themselves and families.

The number of signatures to this memorial is 571.

The agreement with the Kiowa Indians has been pending before Congress since 1892. A bill to ratify and confirm said agreement has been introduced in both the House and Senate at the present session. (H. R. 905, S. 1352.)

The former bill provides for the ratification of the agreement with certain amendments. The latter ratifies the bill with amendments similar in effect, which amendments are written into the agreement. Neither of the bills contains any provision for submitting the amendments to the Indians for their acceptance or rejection.

The preamble of the Senate bill recites that—

> Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, duly appointed commissioners on the part of the United States, did, on the sixth day of October, eighteen hundred and ninety-two, conclude an agreement with the Comanche, Kiowa, and Apache tribes of Indians in Oklahoma, formerly a part of the Indian Territory, which said agreement, *as amended by this act*, is in words and figures as follows.

This title is misleading, inasmuch as it is not an act to ratify and confirm an agreement, but to *amend* an agreement, without the consent of one of the contracting parties thereto.

It is certainly a novel proposition in law that one party to an agreement may, without the consent of the other, alter or modify an essential part of such contract. It is apparent that no court of law would uphold or enforce any contract so altered or amended.

In all dealings with the Indian tribes I do not find that any agreement has ever been "amended" by the Congress without providing for the assent of the Indians interested. In one or possibly two cases Congress has entirely ignored an agreement for the cession of lands upon the ground that the Indians, parties thereto, were not the owners of the lands ceded, but it has never attempted to write in new and different words in a signed agreement without providing that the amendment should be open to rejection or adoption by the Indians interested.

A number of cases are found in the statutes where agreements have been so amended, but in every case provision has been made for resubmitting the agreement as amended for the consideration of the Indians. I mention three such cases:

In ratifying the agreement made by Commissioners John V. Wright,

Jared W. Daniels, and Charles F. Larrabee, on behalf of the United States, with the Indians of the Fort Berthold Agency, Congress amended article 6 of said agreement, and provided that—

> This act shall take effect only upon the acceptance of the modification and changes made by the United States as to article 6 of the said agreement by the said tribe of Indians, in manner and form as said agreement was assented to, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that said acceptance and consent have been obtained in such manner and form. (26 Stats., 1035.)

The agreement between the commissioners on behalf of the United States and the Cherokee Nation, concluded December 19, 1891, which provided for the cession by the said nation to the United States of all the lands known as the "Cherokee Outlet," was ratified with amendments. (27 Stats., 641.)

To provide against the possible contention that the amended agreement was not the contract consented to by the Cherokee Nation, Congress provided—

> That the acceptance by the Cherokee Nation of Indians of any of the money appropriated as herein set forth shall be considered and taken, and shall operate as a ratification by said Cherokee Nation of Indians of said agreement as it is hereby proposed to be amended, and as a full and complete relinquishment and extinguishment of all their title, claim, and interest in and to said lands.

As a matter of fact the amendments proposed by Congress in the act of March 3, 1893, were formally concurred in by the Cherokee Nation on April 3, 1893.

The agreement with the Shoshone and Arapaho tribes of Indians in Wyoming was ratified by section 12 of the act of June 7, 1897 (30 Stats., 93), which section commences as follows:

> That the following amended agreement with the Shoshone and Arapaho tribes of Indians in the State of Wyoming is hereby accepted, ratified, and confirmed, and shall be binding upon said Indians when they shall in the usual manner agree to the amendment herein made thereto.

A further examination of the statutes show that prior to 1873, when the relations of the Government and the Indian tribes were under treaties, all amendments made by the Senate to treaties presented by the Executive for its consideration were submitted to the Indians for their concurrence before they were deemed to be in effect, and it does not appear anywhere in the statutes, so far as this office has been able to ascertain, that this Government has assumed the authority to change or amend a treaty or agreement with an Indian tribe, and to put the amended or changed agreement or treaty into effect without the consent of the tribe interested.

The sixth article of the agreement signed by the Comanche, etc., Indians, provides as follows:

> As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Two hundred thousand ($200,000) dollars in cash, to be distributed per capita among the members of said tribes within one hundred and twenty (120) days after this agreement shall be ratified by the Congress of the United States; two hundred thousand ($200,000) dollars to be paid out to said Indians under the direction of the Secretary of the Interior in one year after said first payment, and one hundred thousand ($100,000) dollars in the same manner in one year from date of second payment, and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to said Indians per capita annually.

The "amended agreement" provides as follows:

As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of *not exceeding* two million ($2,000,000) dollars, in manner as follows:

As fast as the lands opened for settlement under this act are sold, the money received from such sales shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians: *Provided*, That no part of said money shall be paid to said Indians until the question of title to the said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims, as hereinafter provided; and said court shall by its decree direct the payment of said two millions of dollars to the tribes entitled to the same as herein provided.

If it were within the constitutional power of Congress and in accordance with law and equity to thus amend an agreement, I should strongly object to the above modification for three reasons:

First. It is a matter of great uncertainty when, if ever, the Indians will receive any compensation for their lands.

By the laws under which they are to be opened settlers are required to pay $1.50 per acre within five years from date of original entry, one-half of which is to be paid within two years.

The Cheyenne and Arapahoe lands were opened to settlement under the same terms something over seven years ago, and not one dollar has yet been paid therefor, as appears from a recent statement of the General Land Office. By the act of July 1, 1898, the time of payment has been extended to July 1, 1900, and the indications are very strong that no payment will ever be made.

Practically the lands are to be taken without consideration.

Second. If the lands *are* paid for there is no certainty that the Comanche, etc. Indians will ever receive one cent.

Should the Supreme Court follow the construction of the Choctaw and Chickasaw treaty, adopted by Congress after full deliberation and careful consideration, invoked by the earnest appeal of President Harrison to reconsider its action in directing payment to these nations, as has been done by the Court of Claims as to the Wichita Reservation, the entire $2,000,000 must be paid to the Choctaws and Chickasaws.

But the *rights* of the Comanches, etc., are in no way dependent upon the rights of other tribes.

By the second article of the treaty of October 21, 1867 (15 Stats., 581), the United States agreed that the district of country therein described (as in the agreement) should be set apart for the absolute and undisturbed use and occupation of the Kiowas and Comanches and for such other friendly tribes or individual Indians as, from time to time, they might be willing to admit among them.

By another treaty concluded on the same day (Id., 589) with the Kiowas and Comanches and the Apaches, the latter tribe agreed to be incorporated with the Kiowas and Comanches, who agreed that the Apaches should share in all the benefits of their treaty (first above named).

In the case of the United States *v.* Cook (19 Wall., 591) the Supreme Court held that the right of the Indians to their occupancy is as sacred as that of the United States to the fee, and it was this title that was guaranteed to these Indians by the above treaty. If the United States did not have clear title by which it could convey the right of occupancy to the Indians it must clear the title in order that it may do so. When the Indians are called upon to part with the sacred right of occupancy their compensation is in no manner dependent upon the preexisting rights of other parties.

If the United States owes the Choctaws and Chickasaws any amount for these lands it must pay them, and also the Comanches, etc., for their surrender.

Especially is this so, as it is not claimed or pretended that any amount is due the former so long as the occupancy of the latter continues.

If it should be claimed that Congress has the right to repeal the treaty, the reply is that this right exists only as to cases purely political. It is equally true that Congress has no constitutional power to settle or interfere with rights under treaties except in such cases. (See Holden *v.* Joy, 17 Wall., 247, and authorities therein cited.) This is distinctly recognized in the Chinese exclusion cases. (130 U. S., 609.)

Third. The "agreement" as amended makes no provision for the payment of the principal or interest to the Indians, except that the court shall by its decree direct the payment of said $2,000,000 to the tribes entitled to the same.

The manner of payment is left in uncertainty.

The act contains a provision (section 6) that should any of the lands allotted to the Indians contain valuable mineral deposits, such deposits shall be open to location and entry under the existing mining laws of the United States, but makes no provision for the allotment of other lands in lieu of those so located, nor for other compensation for such lands.

Even if it be constitutional, I do not believe it would be either just or equitable to take away from an allottee the whole or any part of the land which the United States agrees to hold for his exclusive use and benefit, without compensation.

It is, of course, recognized that the United States does not intend to convey mineral deposits to an allottee, and allots no land known to contain such deposits, but by the subsequent discovery of minerals and their opening to location and entry the allottee is deprived of the use of the land for the purposes for which it was allotted.

I can see no justice in placing the sums received from the sale of such allotted mineral lands to the credit of the Indian tribes and leaving the allottee without land or other compensation than such as he would possibly receive as his pro rata share of the tribal funds and which would not be increased by the sale of his entire allotment, the maximum compensation being limited to $2,000,000.

As before remarked, this agreement has been pending for more than six years. In the interest of all concerned it should be finally disposed of during the present session of Congress. If an amendment be inserted in either of the pending bills, submitting the amended agreement for the acceptance or the rejection of the Indians, or if it should be concluded that it would be the duty of the Department, in case either of the bills should pass in their present form, to submit the matter for consent or rejection by the Indians, I should have no objection to its passage, and am of the opinion that the matter would thus receive final disposition.

In case the amended agreement should be rejected by the Indians, as seems most probable, further negotiations could be had with them, and no doubt an agreement obtained which would be fair to them as well as to the United States.

As shown in office report of December 23, 1899, upon the resolution of the Senate calling for certain information in regard to the Kiowa Reservation, the lands of said reservation are not adapted to agricultural purposes and should be allotted to the Indians in larger quantities than is provided for in the present agreement.

Although this office has not hitherto definitely opposed the ratification of the agreement in its present form, the result of the investigation made by Special Agent Pray and Agent Randlett is such as to lead it to conclude that the agreement ought not to be ratified. I am, therefore, of the opinion that the agreement should be rejected by Congress, or that it be ratified with the proposed amendments and submitted to the Indians for their acceptance or rejection.

Two copies of the memorial are herewith transmitted (the signatures being omitted), with the recommendation that they be forwarded to the Senate and House Committees on Indian Affairs with a copy of this report.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

The SECRETARY OF THE INTERIOR.

KIOWA, COMANCHE, AND APACHE RESERVATION,
Mount Scott, Okla., October 9, 1899.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.:

We, the adult male members of the Kiowa, Comanche, and Apache Indian tribes now residing on our reservation in the Oklahoma Territorry, beg that the honorable the Commissioner of Indian Affairs will approve this, our petition and have it presented to the Committees on Indian Affairs of both houses of Congress.

We pray that the so-called Jerome treaty, made with our people in September, 1892, may not be ratified by Congress because that those of us who signed that treaty were misled by those who represented the Government through the interpreters employed by the commissioners appointed to treat with us. These interpreters led us into the belief that if we did not sign said treaty our lands would be taken from us under the provisions of a law called the Dawes law, then in existence, which would be very much more unfavorable to us than was provided for us in the proposed treaty we were asked to accept, and it was from this assurance, and for no other reason, that we signed said treaty. This was impressed upon us by our agent at that time, who claimed he was our best friend, and if we adopted him into our tribe he was coming to live with us as one of our people, and that his interests and ours were alike, and that to sign the treaty would save us from being forced to accept, under the other law, a less number of acres by allotment than we would be given by the terms of the proposed treaty.

Therefore, each and every one of us who signed that treaty do solemnly declare that if we had not been deceived we would never have signed it. We were not allowed to have any counsel to advise us what was best for us to do, and the white people who were on the reservation at that time were threatened with ejection should they in any way give us advice contrary to that which we received from the commissioners who represented the Government through the interpreters employed by said commissioners. There are white men of good repute now living on our reservation by permission of the Indian Department at Washington who know this to be true, and will make affidavit to the fact that they were threatened with ejectment if they did not advise us to sign the treaty as it was presented to us by the members of the Jerome commission.

We now realize that if this treaty is ratified we are doomed to

destruction as a people, and brought to the same impoverished condition to which the Cheyenne and Arapahoe and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them. We submit that our lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle, and that all of it we do not need for our use as homes and grazing our own stock is open for leasing to people engaged in the cattle-raising industry of the country, and that the general public, as well as ourselves, derive more benefit from this condition than would be derived were our lands thrown open for settlement by people who want it for homesteads. From the lands we now have leased we are deriving a revenue that enables us to procure many of the comforts of life. If this revenue is taken from us at this time it will stop the progress we are making in ways of civilization and blight the hopes we have entertained that the Government would continue to protect our interests until we were fitted to compete with the white man in civilized ways for self-support.

We submit that the provision for lands to be allotted to us under this treaty are insufficient because it is evident we can not, on account of the climate of our section, which renders the maturity of crops uncertain, become a successful farming community; that we, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support. And we therefore pray, if we can not be granted the privilege of keeping our reservation under the treaty made with us in 1868, and known as the Medicine Lodge treaty, that authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to us sufficient for us to graze upon it enough stock cattle, the increase from which we can market for support of ourselves and families.

As evidence that this statement is true regarding the inadaptability of the lands of Oklahoma for farming industry, we ask consideration of the fact that to-day there are 6,338,363 acres of land in the Territory, outside of our reservation, awaiting entry from people seeking homesteads.

In conclusion, we beg consideration of the fact that we have kept faith with the Government as pledged in the treaty ratified July 25, 1868, and as a people we are obedient to the laws of the land; that we are not drunkards, nor do we molest the property of the whites who have located on lands adjoining ours. We have placed our children in schools provided by the Government and Christian societies; that these several schools, having a capacity for seven hundred pupils, are kept filled with our children, and that we point to these facts as evidence that we are striving in the right way to fit our people for the day we realize must come, when their children will be dependent upon their own intelligence and physical strength for the support of themselves and their kindred.

We therefore pray that for the reasons we have given herein we may be heard in this, our repudiation of the Jerome treaty, and that Congress will cast it out and not accept it as our free act and deed.

KIOWA AGENCY.

Anadarko, Okla., December 18, 1899.

Interpreter's certificate.

I certify upon honor that I was present at a general council of all the Indians of the Kiowa, Comanche, and Apache tribes of the Kiowa,

etc., Agency, Okla., held at Mount Scott, Apache, Kiowa, and Comanche Indian Reservation, Okla., October 9, 1899, and that the foregoing memorial was adopted and duly signed by all the Indians whose names are attached thereto; that the signatures were attached after the subject of the memorial was duly discussed and understood by all the Indians interested, and that each and every one signed of his own free will, with full knowledge of the purport of his act.

OTTO WELLS,
Official Interpreter.

Agent's certificate.

I, James F. Randlett, lieutenant-colonel, U. S. A., United States Indian agent for the Kiowa, etc., Agency, Okla., certify upon honor that the facts stated in the foregoing "Interpreter's certificate" are true.

JAMES F. RANDLETT,
Lieutenant-Colonel, U. S. A., United States Indian Agent.

O

56TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 419.

AGREEMENT WITH INDIANS OF FORT HALL RESERVATION.

EBRUARY 22, 1900.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Ir. STEPHENS, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 255.]

The Committee on Indian Affairs, to whom was referred the bill . 255) to ratify an agreement with the Indians of the Fort Hall dian Reservation in Idaho and making an appropriation to carry the me into effect, have examined the same and report the bill back vorably, with a recommendation that it pass with the following nendments, viz:

Strike out all of section 5 of said bill, beginning on line 24, page 9, d insert in lieu thereof the following, to be known as section 5 of id bill as amended by this committee, viz:

EC. 5. That on the completion of the allotments and the preparation of the sched- provided for in the preceding section, and the classification of the lands as pro- ed for herein, the residue of said ceded lands shall be opened to settlement by the eclamation of the President, and shall be subject to disposal under the homestead, wn-site, stone and timber, and mining laws of the United States only, excepting sixteenth and thirty-sixth sections in each Congressional township, which shall reserved for common-school purposes and be subject to the laws of Idaho: *Pro- d*, That all claimants for lands lying under the canal of the Idaho Canal Company, which are susceptible of irrigation from the water from said canal, shall pay for same at the rate of ten dollars per acre; all agricultural lands not under said al shall be paid for at the rate of two dollars and fifty cents per acre, and grazing ds at the rate of one dollar and twenty-five cents per acre, one-fifth of the respec- sums to be paid at time of original entry, and four-fifths thereof at the time of king final proof; but the rights of honorably discharged Union soldiers and sailors, efined and described in sections twenty-three hundred and four and twenty-three ndred and five of the Revised Statutes of the United States, shall not be abridged, ept as to the sum to be paid as aforesaid.

he classification as to agricultural and grazing lands shall be made by an employee he General Land Office under the direction of the Secretary of the Interior.

o lands in sections sixteen and thirty-six now occupied, as set forth in article e of the agreement herein ratified, shall be reserved for school purposes, but the e of Idaho shall be entitled to indemnity for any lands so occupied: *Provided*, t none of said lands shall be disposed of under the town-site laws for less than ten

dollars per acre: *And provided further*, That all of said lands within five miles of th town of Pocatello shall be sold at public auction, under the direction of the Secretar tary of the Interior, for not less than ten dollars per acre.

The committee further recommends as an amendment the following to be known as section 6 of this bill:

SEC. 6. Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, du appointed commissioners on the part of the United States, did, on the sixth day October, eighteen hundred and ninety-two, conclude an agreement with th Comanche, Kiowa, and Apache tribes of Indians in Oklahoma, formerly a part the Indian Territory, which said agreement is in the words and figures as follows:

"Articles of agreement made and entered into at Fort Sill, in the Indian Territor on the twenty-first day of October, eighteen hundred and ninety-two, by and betwe David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on th part of the United States, and the Comanche, Kiowa, and Apache tribes of India in the Indian Territory.

"ARTICLE I.

"Subject to the allotment of land, in severalty to the individual members of th Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as herei after provided for, and subject to the conditions hereinafter imposed, and for the co siderations hereinafter mentioned, the said Comanche, Kiowa, and Apache India hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, wit out any reservation whatever, express or implied, all their claim, title, and interest any kind and character, in and to the lands embraced in the following-describ tract of country in the Indian Territory, to wit: Commencing at a point where t Washita River crosses the ninety-eighth meridian west from Greenwich; thence the Washita River, in the middle of the main channel thereof, to a point thirty mil by river, west of Fort Cobb, as now established; thence due west to the north fork Red River, provided said line strikes said river east of the one-hundredth meridi of west longitude; if not, then only to said meridian line, and thence due south, said meridian line, to the said north fork of Red River; thence down said north fo in the middle of the main channel thereof, from the point where it may be first int sected by the lines above described, to the main Red River; thence down said R River, in the middle of the main channel thereof, to its intersection with the nine eighth meridian of longitude west from Greenwich; thence north, on said meridi line, to the place of beginning.

"ARTICLE II.

"Out of the lands ceded, conveyed, transferred, relinquished, and surrendered Article I hereof, and in part consideration for the cession thereof, it is agreed by t United States that each member of said Comanche, Kiowa, and Apache tribes Indians over the age of eighteen (18) years shall have the right to select for hims or herself one hundred and sixty (160) acres of land to be held and owned in s eralty, to conform to the legal surveys in boundary; and that the father, or, if be dead, the mother, if members of either of said tribe of Indians, shall have t right to select a like amount of land for each of his or her children under the age eighteen (18) years; and that the Commissioner of Indian Affairs, or someone him appointed for the purpose, shall select a like amount of land for each orph child belonging to either of said tribes under the age of eighteen (18) years.

"ARTICLE III.

"It is further agreed that the land in said reservation shall be classed as gra growing and grazing land; and in making selection of lands to be allotted in sev alty as aforesaid each and every Indian herein provided for shall be required to t at least one-half in area of his or her allotments of grazing land. It is hereby furt expressly agreed that no person shall have the right to make his or her selection land in any part of said reservation that is now used or occupied for military, agen school, school-farm, religious, or other public uses or in sections sixteen (16) thirty-six (36) in each Congressional township, except in cases where any Comanc Kiowa, or Apache Indian has heretofore made improvements upon and now uses occupies a part of said sections sixteen (16) and thirty-six (36), such Indian m make his or her selection within the boundaries so prescribed so as to include his her improvements. It is further agreed that wherever in said reservation any Indi entitled to take lands in severalty hereunder, has made improvements, and now t and occupies the land embracing such improvements, such Indian shall have

undisputed right to make his or her selection within the area above provided for allotments, so as to include his or her said improvements.

"It is further agreed that said sections sixteen (16) and thirty-six (36) in each Congressional township in said reservation shall not become subject to homestead entry but shall be held by the United States and finally sold for public school purposes. It is hereby further agreed that wherever in said reservation any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians, the land so occupied may be allotted and confirmed to such society or organization, not, however, to exceed one hundred and sixty (160) acres of land to any one society or organization so long as the same shall be so occupied and used; and such land shall not be subject to homestead entry.

"ARTICLE IV.

"All allotments hereunder shall be selected within twelve months from the ratification of this agreement by the Congress of the United States: *Provided*, The Secretary of the Interior, in his discretion, may extend the time for making such selection; and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in that time, then the allotting agent in charge of the work of making such allotments shall within the next thirty (30) days after said time make allotments to such Indians, which shall have the same force and effect as if the selection were made by the Indian.

"ARTICLE V.

"When said allotments of land shall have been selected and taken as aforesaid and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for the period of twenty-five (25) years, in the time and manner and to the extent provided for in the act of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes," approved February 8, 1887, and an act amendatory thereof, approved February 28, 1891.

"And at the expiration of the said period of twenty-five (25) years the title thereto shall be conveyed in fee simple to the allottees or their heirs, free from all incumbrances.

"ARTICLE VI.

"As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million (2,000,000) dollars.

"To be paid as follows: As fast as the lands opened for settlement under this Act are sold, the money received from such sales shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians; *Provided*, That no part of said money shall be paid to said Indians until the question of title to the said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims, as hereinafter provided; and said court shall by its decree direct the payment of said two millions of dollars to the tribes entitled to the same.

"Nothing herein contained shall be held to affect in any way any annuities due said Indians under existing laws, agreements, or treaties.

"ARTICLE VIII.

"It is further agreed that wherever in said reservation any member of any of the tribes of said Indians has, in pursuance of any laws or under any rules or regulations of the Interior Department taken an allotment, such allotment, at the option of the allottee, shall be confirmed and governed by all the conditions attached to allotments taken under this agreement.

"ARTICLE IX.

"It is further agreed that any and all leases made in pursuance of the laws of the United States of any part of said reservation which may be in force at the time of the ratification by Congress of this agreement shall remain in force the same as if this agreement had not been made.

"ARTICLE X.

"It is further agreed that the following-named persons, not members by blood of either of said tribes, but who have married into one of the tribes, to wit, Mabel R. Given, Thomas F. Woodward, William Wyatt, Kiowa Dutch, John Nestill, James N. Jones, Christian Ke oh tah, Edward L. Clark, George Conover, William Deitrick, Ben Roach, Lewis Bentz, Abilene, James Gardloupe, John Sanchez, the wife of Boone Chandler, whose given name is unknown, Emmit Cox, and Horace P. Jones, shall each be entitled to all the benefits of land and money conferred by this agreement, the same as if members by blood of one of said tribes.

"ARTICLE XI.

"This agreement shall be effective only when ratified by the Congress of the United States."

Said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended.

That the Secretary of the Interior is hereby authorized and directed to cause the allotments of said lands, provided for in said treaty among said Indians, to be made by any Indian inspector or special agent.

That all allotments of said land shall be made under the direction of the Secretary of the Interior to said Indians within one year from the passage of this act, subject to the exceptions contained in article four of said treaty.

That the lands acquired by this agreement shall be opened to settlement by proclamation of the President within six months after allotments are made, and be disposed of under the general provisions of the homestead and town-site laws of the United States: *Provided*, That in addition to the land-office fees prescribed by statute for such entries the entryman shall pay one dollar and twenty-five cents per acre for the land entered at the time of submitting his final proof: *And provided further*, That in all homestead entries where the entryman has resided upon and improved the land entered in good faith for the period of fourteen months he may commute his entry to cash upon the payment of one dollar and twenty-five cents per acre: *And provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged: *And provided further*, That any person who, having attempted to but for any cause failed to secure a title in fee to a homestead under existing laws, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands: *And provided further*, That any qualified entryman having lands adjoining the lands herein ceded, whose original entry embraced less than one hundred and sixty acres in all, shall have the right to enter so much of the lands by this agreement ceded lying contiguous to his said entry as shall, with the land already entered, make in the aggregate one hundred and sixty acres, said land to be taken upon the same conditions as are required of other entrymen: *And provided further*, That the settlers who located on that part of said lands called and known as the "neutral strip" shall have preference right for thirty days on the lands upon which they have located and improved.

That sections sixteen and thirty-six, thirteen and thirty-three, of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved, sections sixteen and thirty-six for the use of the common schools, and sections thirteen and thirty-three for university, agricultural colleges, normal schools, and public buildings of the Territory and future State of Oklahoma; and in case either of said sections, or parts thereof, is lost to said Territory by reason of allotment under this act or otherwise, the governor thereof is hereby authorized to locate other lands not occupied in quantity equal to the loss.

That the payment for said lands shall be made to the Indian tribes entitled to receive the same under the provisions of this act as fast as the lands opened for settlement under this act are sold. The money received from such sale shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians: *Provided*, That no part of said money shall be paid to said Indians until the question of title to said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims as hereinafter provided for. And said court shall direct the payment thereof to the tribes that they may find entitled thereto.

That none of the money or interest thereon which is, by the terms of the said agreement, to be paid to said Indians shall be applied to the payment of any

judgment that has been or may hereafter be rendered under the provisions of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

That should any of said lands allotted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands.

That as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing treaty as soon as the same are abandoned by said Comanche, Kiowa, and Apache tribes of Indians, jurisdiction be, and is hereby, conferred upon the United States Court of Claims to hear and determine the said claim of the Chickasaws and the Choctaws, and to render a judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations, and the Comanche, Kiowa, and Apache tribes of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States; and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: *And provided further*, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof.

That said action shall be presented by a single petition making the United States party defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorneys of said Indians upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *Provided*, That if said Choctaw and Chickasaw nations do not bring their action within ninety days from the approval of this act, or should they dismiss said suit, and the same shall not be reinstated, their claim shall be forever barred.

The committee have added section 6 to said Senate bill which ratifies and confirms an agreement with the Comanche, Kiowa, and Apache tribes of Indians in Oklahoma Territory and opens their reservations for settlement.

The importance of this amendment has caused your committee to carefully examine the subject, and we have embodied House bill 8590 as an amendment.

A bill for the same purpose passed this House in the Fifty-fifth Congress, after having received a unanimous report from this committee, and after the fullest hearings from delegations of the Indian tribes and all parties at interest.

Your committee find that the land described in the agreement is located in what is known as the "leased district," and that the Choctaw and Chickasaw nations of Indians claim an interest in so much of it as the Comanche, Kiowa, and Apache tribes of Indians do not take by allotment, on the ground that by the treaty of 1866 they only ceded the land in trust, while it is claimed by the United States that by said treaty the said Choctaw and Chickasaw nations, for a valuable consideration, ceded all their rights, title, and interest in and to said lands to the United States.

Your committee believe that certain changes should be made in the agreement, so as to extend the time of the opening, change the date and manner of payments, extend the mining laws of the United States over the reservation, and provide for the settlement in court of the claim of the Choctaw and Chickasaw nations.

The following changes are made in the agreement:

Article 4 is amended so as to give twelve months for the selection of allotments in lieu of requiring them to be made in ninety days. The manner of paying for the land is changed so that as fast as the lands are sold the money received from such sales is to be covered into the Treasury and placed to the credit of said Indians, but no part of it is to be paid out until the question of title is fully settled.

The bill makes the following provisions for the settlement of the claim of the Choctaw and Chickasaw nations:

That as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing treaty, as soon as the same are abandoned by said Comanche, Kiowa, and Apache tribes of Indians, jurisdiction be, and is hereby, conferred upon the United States Court of Claims to hear and determine the said claim of the Chickasaws and the Choctaws and to render judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations, and the Comanche, Kiowa, and Apache tribes of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claims; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States, and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: *And provided further*, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof.

That said action shall be presented by a single petition making the United States party defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorneys of said Indians upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *Provided*, That if said Choctaw and Chickasaw nations do not bring their action within ninety days from the approval of this act, or, should they dismiss said suit, the same shall be reinstated, and their claims shall be forever barred.

These two sections are necessary, in the judgment of your committee, for the reason that the land is located in what is termed the "leased district," and the Choctaw and the Chickasaw nations claim that by the treaty of 1866 they only ceded the land in trust, and that as soon as the Comanche, Kiowa, and Apache tribes of Indians abandon the land, so much of it as they do not take by allotment reverts to said Choctaw and Chickasaw nations; while it is claimed on the part of the United States that by said treaty of 1866 the Choctaws and Chickasaws, for a valuable consideration, ceded all their rights, title, and interest in and to said lands to the United States.

This agreement was made or entered into on the 6th day of October, 1892, and was favorably reported in the Fifty-fourth Congress. It embraces 2,968,893 acres of land; and after allotting or giving to each Indian 160 acres, it cedes to the United States 2,517,853 acres, which will be opened for settlement.

There are only 2,679 of these Indians. They occupy over 600 dwelling houses, which may be retained by them when they take their allotments. It is claimed that within one year each head of a family on the reservation will be occupying his own dwelling.

This reservation contains very valuable farm and grazing lands. For years the most of it has been used by cattlemen for the grazing of large herds of cattle.

Your committee are advised that these Indians have made great

advancement during the last few years under the management of acting agent Captain Baldwin and those who have succeeded him. Many of them are now occupying their own houses, and are fast becoming self-supporting.

The governor of Oklahoma Territory says:

I can not refrain from urging, as I have heretofore, that these reservations be at once opened to settlement. They embrace some of the finest lands in Oklahoma Territory, and would be capable of supporting a large population.

The following article shows the condition and character of the land in this reservation:

The Comanche News says: "Taking the census of the different tribes within this reservation, as enumerated by Government officials, there are 2,679 Indians who will be entitled to 160 acres of land each. Subtracting this and the military reservation from the total acreage in the reservation, we have a little more than 2,500,000 acres for disposal by the Government. Within this are the Wichita Mountains, containing, the Secretary says, about 400,000 acres, and the Kechi Hills, containing 25,000 acres. This taken from the 2,500,000 acres still leaves over 2,000,000 acres, at least 90 per cent of which is fine agricultural land, as will be attested by the thousands of honest men in this country who are thoroughly acquainted with every section of land within the reservation.

"As to the area of the Wichita Mountains, it is admitted that most of it is fit for neither grazing nor agriculture, but it is not entirely a desert waste. A very conservative estimate would place the useful lands for grazing and agricultural purposes at an amount sufficient for 500 homes of 160 acres each. Besides this, it is generally conceded that these mountains abound in valuable minerals.

"With reference to the character of the agricultural lands, it is only necessary to ask the hundreds of farmers along the border to learn that they have no doubt concerning the good quality of the land for grain, cotton, etc. It would be a strange coincidence indeed if the land in the reservation should prove to be worthless for agriculture while the adjoining lands in the Chickasaw country should yield so bountifully to the touch of the intelligent farmer.

"We are informed by reliable farmers, who have been farming in the Chickasaw country within 200 yards of the Comanche and Kiowa Reservation, that they have known but three partial failures in twelve years—never a total failure of all crops. This true, why should less good results be expected from the adjoining lands within the reservation?

"As an index to what is being done in this section in the way of farm products the following statement, by the agent of the Rock Island Railroad at this point, will not be amiss:

"'For the fiscal year just passed we have shipped from this station 2,850 bales of cotton, about 100 cars of grain, and a number of cars of stock.'

"What has been done here on the east of the ninety-eighth meridian can be done on the west side.

"I have had a general knowledge of the reservation known as the Comanche country for over twenty years, and know that a large majority of the land is fine agricultural land, as good and even better in the main than this part of the Chickasaw country. The water is more plentiful and better than in the Chickasaw country. There is comparatively very little waste land in the reservation.

"My occupation is farming.

"J. M. MONTGOMERY.

"Subscribed and sworn to before me this 24th day of January, 1900.

"J. B. WILKINSON, *Notary Public.*

"I have had a knowledge of the country known as the Comanche country for six years, and know it to be as good and, in some respects, superior to the Chickasaw country. It would be a fine farming country. The great majority of the land is tillable and of a very productive nature. There is room in that country for several thousand good homes after the Indians have been allotted their lands.

"My occupation is dry-goods clerk.

"G. H. KINCAID.

"Subscribed and sworn to before me this 24th day of January, 1900.

"J. B. WILKINSON, *Notary Public.*

"I have resided along the border of the Kiowa and Comanche country for fifteen years and have a general knowledge of the country. A very large per cent of the land is high-grade agricultural land, and, in the main, is better watered than the Chickasaw country or north Texas. The seasons are comparatively sure. Within the Wichita Mountains are some fine valleys of land. A large number of Indians are located in these mountains and will take their allotments there.

"My occupation is stock raising.

"TOM FARRIS.

"Subscribed and sworn to before me this 24th day of January, 1900.

"J. B. WILKINSON, *Notary Public.*"

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57TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 552.

MEMORIAL FROM THE CHEROKEE INDIANS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A MEMORIAL FROM THE CHEROKEE INDIANS, TOGETHER WITH THE DRAFT OF A BILL FOR THE ALLOTMENT OF LANDS.

APRIL 16, 1902.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, April 15, 1902.

SIR: I have the honor to transmit herewith a memorial of the national council of the Cherokee Nation, approved by its principal chief on December 17, 1901, requesting—

the individualization of the lands and disbursements of moneys of the Cherokee tribe of Indians, according to the twentieth article of the treaty of July nineteenth, eighteen hundred and sixty-six, in lieu of the manner and method of allotment, as is provided for in the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," commonly known as the Curtis Act.

Upon a careful examination of the provisions contained in said memorial, it is considered that many of them are inexpedient and impracticable, and I have therefore caused to be prepared a draft of legislation, being "a bill to allot the lands of the Cherokee tribe of Indians in Indian Territory, and for other purposes," which in my judgment is preferable to the memorial above referred to.

The provisions of this bill relating to the allotment of lands and the disposition of mineral in said nation are quite similar to those contained in the recent agreement with the representatives of the Choctaw and Chickasaw nations which was submitted by the Department on March 26 last.

The bill also contains other provisions similar to those found in the agreement, which, with certain amendments, was ratified by the act of Congress approved March 1, 1901 (31 Stat., 848), and was afterwards rejected at an election held on April 29, 1901, the majority against the agreement being 1,023 out of a total of 5,569 votes cast at the election.

In view of the action of the nation in rejecting said agreement, no provision has been placed in said bill for its submission to the legal voters of the nation for rejection or ratification.

It is confidently believed that if legislation be enacted upon the lines indicated in said bill it will greatly facilitate the work of the Department in winding up the affairs of the Cherokee Nation.

The memorial, marked "Exhibit A," and the bill, marked "Exhibit B," are accordingly submitted for such action as may be deemed appropriate in the premises.

Respectfully,

E. A. HITCHCOCK,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

EXHIBIT A.

Memorial of the national council of the Cherokee Nation requesting the individualization of the lands and disbursements of moneys of the Cherokee tribe of Indians according to the twentieth article of the treaty of July nineteenth, eighteen hundred and sixty-six, in lieu of the manner and method of allotment as is provided for in the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," commonly known as the Curtis Act, and through a delegation to be provided for and appointed.

SEC. 1. That, conditioned as hereafter set forth, exercising the right of the national council as set forth in the twentieth article of the treaty of eighteen hundred and sixty-six between the Government of the United States and the Cherokee Nation, the request be, and the same is hereby, made that the country reserved for the Cherokees (the lands belonging to the Cherokee tribe of Indians in the Indian Territory) shall be allotted among them at the expense of the United States according to the survey of same already completed by the United States: *Provided, however,* That this request for allotment is made only with the understanding that such allotment shall be made under conditions in the manner as follows, to wit:

That all lands belonging to the Cherokee tribe of Indians, in Indian Territory, except as are herein expressly reserved, shall be appraised at their true values, considering the nature and fertility of the soil, location and value of same, excluding improvements placed by allottee on lands selected by him.

SEC. 2. All appraisements shall be made under the direction of the Secretary of the Interior and shall be completed and finally approved before September first, nineteen hundred and two, or as soon thereafter as practicable, under no circumstances later than November first, nineteen hundred and two. When said appraisements shall have been finally completed and approved by the Secretary of the Interior, a full detailed report of same shall be furnished the principal chief for the information of the Cherokee Nation and people.

SEC. 3. The total value of the divisible lands shall be determined and the per capita share of each beneficiary ascertained before beginning allotment of lands.

SEC. 4. The measure for the equalization of allotments shall be the average or per capita share of the total valuation of the lands.

SEC. 5. All lands of the Cherokee Nation, as herein provided, shall be allotted, under the direction of the Secretary of the Interior, to the members of the tribe entitled to share therein so as to give to each so entitled an equal share in the whole, in value, as nearly as may be, and to conform to the survey lines as nearly as may be.

All funds of the tribe, and all moneys accruing to the tribe under the provisions of this plan of allotment, shall be paid, under the direction of the Secretary of the Interior, direct to each individual entitled to share therein as soon after allotment of lands as practicable.

SEC. 6. All controversies arising between members as to their right to select particular tracts of land shall be determined by the Secretary of the Interior.

SEC. 7. Any member having in his possession lands, in actual cultivation, in excess of his per capita share for himself, for his wife, if entitled in her own right and for each of his minor children, shall on or before the first day upon which allotments shall begin select therefrom allotments for himself and for the members of his family aforesaid, which said allotments he may hold and no more; and if he have lawful

improvements upon the excess, he may dispose of same, if he so desires, to any citizen, who may thereupon select lands so as to include his improvements, but after the expiration of said time any citizen may take any lands not already selected by another.

SEC. 8. Each citizen may receive his full pro rata share of lands in a single allotment, and if for any reason separate tracts of land shall be allotted to a citizen he shall receive them all at the same time, and all shall be included in one deed.

SEC. 9. When any citizen shall select his allotment as herein provided, he shall receive certificate therefor, and the Secretary of the Interior shall thereupon put him in immediate and unrestricted possession of the same.

SEC. 10. Each allotment of land shall be nontaxable for twenty-one years, or until title passes from the allottee, such condition to be stipulated in the deed, and shall be free from incumbrance by any debt or obligation contracted prior to the date of the deed.

SEC. 11. Allotments to minors may be selected by the guardian, or by the father or mother, in the order named, and shall not be sold during their minority. Allotments may be selected for prisoners and convicts and aged and infirm persons by their duly appointed agents and for incompetents by their guardians, curators, or other suitable persons akin to them, but it shall be the duty of the Secretary of the Interior to see that such selections are made for the best interests of such persons.

SEC. 12. The Delaware Indians who are citizens of the Cherokee Nation shall take lands and share in the funds of the tribe as their rights may be determined by the Court of Claims or by the Supreme Court, if appealed, in the suit instituted therein by the Delaware Indians against the Cherokee Nation and now pending, when the said suit shall be finally decided, and no allotment of lands herein provided for shall be made until said suit has been finally determined. When final judgment has been rendered in said suit lands shall be allotted to said Delaware Indians in conformity with the terms of the judgment and their individual rights thereunder. The said suit shall be advanced on the dockets of the Court of Claims, and of the Supreme Court if appeal is taken, and shall be determined at the earliest time practicable.

TOWNS.

SEC. 13. To the town of Fort Gibson shall be added three hundred and twenty (320) acres heretofore included in the old military reservation, including the buildings on the same. The said three hundred and twenty acres shall be surveyed and platted and laid out into town lots, with necessary streets and alleys, the same as other towns, and the survey, appraisement, and sale of lots shall be made under rules and regulations to be prescribed by the Secretary of the Interior. All towns as laid off and surveyed and platted into town lots, streets, and alleys by authority of the Cherokee Nation shall remain as platted at the present time: Provided, however, there may be added to any town by extending the original survey, making said additional survey conform to the original survey as to streets, alleys, etc., such additional territory as may be required for its present needs and reasonable prospective growth.

SEC. 14. All towns in the Cherokee Nation having a present population of two hundred or more shall be surveyed, laid out, and appraised under the provisions of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes," approved May thirty-first, nineteen hundred, which said provisions are as follows: "That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and parks, the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee nations as may at that time have a population of two hundred or more, in such manner as will best subserve the then present needs and reasonable prospective growth of such towns. The work of surveying, laying out, and platting such town sites shall be done by competent surveyors, who shall prepare five copies of the plat of each town site, which, when the survey is approved by the Secretary of the Interior, shall be filed as follows: One in the office of Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the Commission to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the best interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of town sites in any of said nations by contract.

"Hereafter the work of the respective town-site commissions provided for in the

agreement with the Choctaw and Chickasaw tribes, ratified in section twenty-nine of the act of June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes,' shall begin as to any town site immediately upon the approval of the survey by the Secretary of the Interior, and not before.

"The Secretary of the Interior may, in his discretion, appoint a town-site commission, consisting of three members for each of the Creek and Cherokee nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots in the nation for which it is appointed, acting in conformity with the provisions of any then existing act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior; and if no two members are able to agree, the matter shall be determined by such Secretary.

"Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee Nation a separate town-site commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that nation. Every such local commission shall be appointed in the manner provided in the act approved June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes.'

"The Secretary of the Interior, where in his judgment the public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances."

"As soon as the plat of any town site is approved, the proper commission shall, with all reasonable dispatch, and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior shall, under the supervision of the Secretary, proceed to the disposition and sale of the lots in conformity with any then existing act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

"The Secretary of the Interior may, for good cause, remove any member of any town-site commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy otherwise occurring in like manner as the place was originally filled.

"It shall not be required that the town-site limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive; but such town-site limits shall be so established as to best subserve the then present needs and reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established: *Provided further*, That the exterior limits of all town sites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.

"Upon the recommendation of the Commission to the Five Civilized Tribes, the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, and Cherokee nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of lands therein, and this irrespective of the population of such town site at the time. Such town sites shall be surveyed, laid out and platted, and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other town sites: *Provided further*, That whenever any tract of land shall be set aside as herein provided, which is occupied by a member of the tribe, such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior: *Provided*, That hereafter the Secretary of the Interior may, whenever the chief executive or principal chief of said nation fails or refuses to appoint a town-site commissioner for any town or to fill any vacancy caused by the neglect or refusal of the

town-site commissioner appointed by the chief executive or principal chief of said nation to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created."

SEC. 15. Any citizen in rightful possession of any town lot which has been improved as required by tribal laws, the right of occupancy of which has been acquired under tribal laws, shall have the right to purchase such lot by paying one-half of the appraised value thereof.

SEC. 16. Any citizen in rightful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase same by paying one-half the appraised value thereof: *Provided*, That any other person in peaceful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase such lot by paying the appraised value thereof.

SEC. 17. Any citizen in rightful possession of any town lot not having improvements thereon, the occupancy of which has been acquired under tribal laws, shall have the right to purchase such lot by paying two-thirds the appraised value thereof.

SEC. 18. When the appraisement of any town lot so improved is made and approved the commission shall notify the claimant thereof of the amount of appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money he shall pay in three equal annual installments without interest; but if the owner of any such lot fail to purchase same and make the first and second payments aforesaid within the time aforesaid the lot and improvements shall be sold at public auction to the highest bidder, under the direction of the townsite commission, at a price not less than their appraised value, and the purchaser shall pay the purchase price to the owner of the improvements, less the appraised value of the lot.

SEC. 19. All lots not having thereon improvements other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after appraisement, under direction of the Secretary of the Interior, after due advertisement, at public auction to the highest bidder, at not less than their appraised value.

SEC. 20. Any citizen occupying more than four acres of unplatted lands which may be laid out in town lots in any town, and which are to be sold at public auction as above, shall have the right to select in a body and retain a sufficient number of such lots at their appraised value as may be equal to a standard allotment, to be taken in lieu of his allotment, and in addition thereto he may purchase one-fourth of the remaining lots, to be selected in a body, into which such land has been divided, by paying two-thirds of their appraised value.

SEC. 21. If any citizen have lands in any town, occupied and used by him as a home, he may purchase the lots into which such lands may be platted by paying one-half their appraised value, not, however, exceeding four acres; but this right shall not extend to persons who take their allotments out of unplatted lands as herein provided.

SEC. 22. The purchaser of any unimproved town lot sold at public auction shall pay twenty-five per centum of the purchase money at the time of the sale, and within four months thereafter he shall pay twenty-five per centum additional, and the remainder of the purchase money he shall pay in two equal annual installments, without interest.

SEC. 23. If the purchaser of any town lot fail to make payment of any sum when due, the same shall thereafter bear six per centum interest per annum until paid.

SEC. 24. The purchaser of any town lot, may at any time, pay the full amount of the purchase money, and he shall thereupon receive title therefor.

SEC. 25. All lots ar parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be conveyed gratuitously to the churches to which such improvements belong, and if such churches have inclosed other adjoining lots actually necessary for their use, they may purchase the same by paying one-half the appraised value thereof.

SEC. 26. All town lots purchased by citizens under the provisions of this plan of allotment shall be free from incumbrance by any debt contracted prior to the date of the deed therefor, except for improvements thereon, or for money borrowed to pay the purchase price to the nation.

SEC. 27. Any citizen having the right of occupancy of an unimproved residence lot in any town at the date of this agreement, and owning no other lot or land therein,

shall have the right to purchase such lot by paying one-half of the appraised value thereof.

SEC. 28. Any person whomsoever may bid for and purchase any lot sold at public auction as herein provided.

SEC. 29. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided, and the same shall constitute a lien upon the interest of the purchaser therein after any payment has been made thereon by him, and if forfeiture of any lot be made, all taxes assessed against such lot shall be paid out of any money paid thereon by the purchaser.

SEC. 30. The town authorities may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from each town, to embrace such number of acres as may be deemed necessary for such purpose, and the town-site commission shall appraise the same at its true value, and the town may purchase the same by paying such value; and if any citizen have improvements thereon, other than fencing and tillage, they shall be appraised by said commission and paid for by the town. The town authorities shall dispose of the lots in such cemetery at reasonable prices, in suitable sizes for burial purposes, and the proceeds thereof shall be applied to the general improvement of the property: *Provided*, That lands already laid out for cemeteries by the tribal authorities shall be included in the cemeteries herein provided for, without cost to the towns, and the holdings of burial lots therein now occupied for such purposes shall in no wise be disturbed.

SEC. 31. All towns now in existence, where there are two or more places of business and less than two hundred and more than fifty inhabitants may be surveyed and laid out into town lots and necessary streets and alleys and platted as other towns, each to embrace such amount of land as may be deemed necessary, not exceeding forty acres, which survey shall be made in manner provided for other towns, and the appraisement of the town lots of said towns may be made by any commission appointed for either of the other towns having two hundred or more inhabitants; and all lots in said towns having thereon improvements other than temporary buildings, fencing, and tillage may be purchased by any citizen having rightful possession thereof and owning the improvements thereon by paying one-half the appraised value. The survey, appraisement, and sale of lots shall be made under regulations to be prescribed by the Secretary of the Interior.

SEC. 32. The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, and other necessary public buildings for its use by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such buildings are to be erected, and if any person have improvements thereon other than temporary buildings, fencing, and tillage the same shall be appraised and paid for by the United States.

ROLLS OF MEMBERSHIP.

SEC. 33. The rolls of membership, upon which final allotment of all the common property of the Cherokee Nation shall be made, shall be as of the date of final ratification of this plan of allotment, and the names of all persons then living and entitled to receive allotments shall be placed on said rolls.

SEC. 34. No child born to any member after said date shall be entitled to a per capita share of said common property.

SEC. 35. Such rolls shall, in all other respects, be made in strict compliance with the provisions of section twenty-one of the act of Congress of June twenty-eighth, eighteen hundred and ninety-eight, entitled, "An act for the protection of the people of the Indian Territory, and for other purposes," and no original application for enrollment shall be made or received after September first nineteen hundred and two.

SEC. 36. If any member who was living and entitled to an allotment on the date of the final ratification hereof, die before receiving his per capita share of the lands and funds of the tribe, his right of allotment and share of the funds shall descend to his heirs according to the laws of descent and distribution of the Cherokee Nation, and shall be allotted and distributed to them accordingly.

SEC. 37. No person who has been enrolled by the proper authority as a citizen of any other tribe shall be enrolled as a member of the Cherokee tribe.

SEC. 38. All members of the Cherokee Nation living and entitled to per capita shares of the lands and funds of the tribe on the day this plan of allotment receives final ratification, and no other person whomsoever, shall take allotments of lands and share in the distribution of the moneys and all other property of the Cherokee tribe or people.

TITLES.

SEC. 39. After final ratification of this plan of allotment the Secretary of the Interior shall furnish the principal chief with blank deeds necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, and whenever title should, under the provisions herein set forth, be conveyed, the principal chief shall thereupon proceed to execute in due form, and deliver to him, a deed conveying to him all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

SEC. 40. The principal chief shall, in like manner and in like effect, execute and deliver to proper parties deeds of conveyance in all other cases herein provided for. All lands and town lots to be conveyed to one person shall, as far as practicable, be included in one deed, and all deeds shall be executed and recorded free of charge to the allottee.

SEC. 41. All conveyances shall be approved by the Secretary of the Interior, and such approval of the Secretary shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his deed.

SEC. 42. The transfer of the title of the Cherokee tribe to individual allottees and to other persons as provided in this plan of allotment shall not inure to the benefit of any railroad company, nor vest in any railroad company any right, title, or interest in or to any of the lands in the Cherokee Nation.

SEC. 43. Any allottee accepting such deed shall be deemed to assent to the allotment and conveyance of all lands of the tribe as provided herein, and as a relinquishment of all his right, title, and interest in and to the same, except in the proceeds of lands reserved from allotment.

SEC. 44. The acceptance of deeds for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe as provided herein.

SEC. 45. All deeds, when executed and approved, shall be filed and recorded as hereinafter provided in section seventy-one.

CHEROKEE ADVOCATE.

SEC. 46. The national newspaper, the Cherokee Advocate, printed in both the Cherokee and English languages, shall continue to be published as at present until the Cherokee Nation shall become part of a State or Territory, when said newspaper plant, including everything connected therewith, excluding the buildings and ground reserved for said newspaper which are herein provided to be otherwise disposed of, shall be sold under the direction of the Secretary of the Interior, and the proceeds divided as other funds of the tribe according to the provisions of section fifty-three.

SCHOOLS.

SEC. 47. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of the children of the Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to the Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results, said schools to be under the direct supervision of a supervisor appointed by the Secretary of the Interior and a school board appointed by the national council.

SEC. 48. All teachers shall be examined by or under the direction of said supervisor and said board of education, and competent teachers and other persons to be engaged in and about the schools, with good moral characters only shall be employed, but when all qualifications are equal preference shall be given to citizens of the Cherokee Nation in such employment. All moneys for running these schools shall be appropriated by the Cherokee national council, not exceeding the amount of the Cherokee school fund, but if said council shall fail or refuse to make the necessary appropriations, the Secretary of the Interior shall direct the use of sufficient amount of the school funds to pay all expenses necessary to the efficient conduct of the schools, strict account thereof to be rendered to him and to the principal chief.

SEC. 49. All accounts of expenditures in running the schools shall be examined by said supervisor and board of education and also by the general superintendent of Indian schools in the Indian Territory before the payment thereof is made.

SEC. 50. If the supervisor and the said board of education fail to agree upon any matter under their direct direction and control, it shall be decided by the said gen-

eral superintendent, subject to appeal to the Secretary of the Interior, but h decision shall govern until reversed by the Secretary.

SEC. 51. Said school fund shall be administered so that each Cherokee citizen school age entitled thereto shall have equal benefits therefrom, as nearly as may b

SEC. 52. The interest arising from the Cherokee orphan fund shall in like mann be used, under the direction of the Secretary of the Interior, for maintaining th Cherokee Orphan Asylum for the benefit of the Cherokee orphan children. Th buildings of said asylum, and one hundred and twenty acres of land, to be taken a body, on which they are located, subject to the approval of the Secretary of th Interior, shall be reserved from allotment, and said institution continued in oper tion until allotment is completed.

SEC. 53. When the Cherokee Nation becomes a part of a State or Territory a buildings herein reserved for school and other public purposes belonging to th Cherokees shall be appraised under the direction of the Secretary of the Interior their true values and the amount thereof appropriated by Congress and added to th invested funds for orphan and school purposes, and all of said funds shall be paid p capita to the members of the Cherokee Nation entitled thereto. Such lands an buildings to be disposed of in such manner as Congress may direct.

RESERVATIONS.

SEC. 54. The following lands shall be reserved from the general allotment herei provided:

(*a*) All lands herein set apart for town sites.

(*b*) Two hundred feet wide occupied as a right of way by the Saint Louis an San Francisco Railroad through the Cherokee Nation from Grand River to the we line of the Cherokee Nation near Tulsa, Indian Territory, and the Missouri, Kans and Texas Railroad, and four hundred feet wide occupied by said railroads at all st tions as at present located, said reservations to be used for railroad purposes only.

(*c*) One hundred feet wide occupied as a right of way by the Kansas City South ern, Kansas and Arkansas Valley, Saint Louis and San Francisco from Afton in th Cherokee Nation to the Neosho River opposite Miami, Indian Territory, and fro Grove, in the Cherokee Nation, to the line of the State of Missouri near Southwes City, Missouri; Atchison, Topeka and Santa Fe from the State line near Caney, Kansa to Owasso, and two hundred feet occupied by said railroads at all stations as a present located, said reservations to be used for railroad purposes only.

(*d*) All lands selected for town cemeteries as herein provided, not to exce twenty acres each.

(*e*) All lands specially reserved in this plan of allotment for schools, churche public buildings, and public institutions.

(*f*) Four acres for Willie Halsell College at Vinita.

(*g*) Four acres for the Baptist Mission School at Tahlequah.

(*h*) Four acres for the Presbyterian School at Tahlequah.

(*i*) Four acres for the Parkhill Mission School south of Tahlequah.

(*j*) Four acres for Elm Springs Mission School on Barren Fork.

(*k*) Four acres for Dwight Mission on Sallisaw.

(*l*) Four acres for Lutheran Mission School on Illinois River north of Tahlequah

(*m*) Four acres for Skiatook Mission near Skiatook.

(*n*) Sufficient grounds for burial purposes where neighborhood cemeteries are no located, not to exceed three acres each.

(*o*) One acre for each church house and schoolhouse outside of towns.

(*p*) The square now occupied by the capital building at Tahlequah.

(*q*) The grounds now occupied by the national jail at Tahlequah.

(*r*) The grounds now occupied by the Cherokee Advocate printing office a Tahlequah.

(*s*) Forty acres for the Cherokee National Male Seminary near Tahlequah.

(*t*) Forty acres for the Cherokee National Female Seminary near Tahlequah.

(*u*) One hundred and twenty acres for the Cherokee Orphan Asylum on Gran River.

(*v*) Forty acres for the Colored High School in Tahlequah district.

(*w*) Forty acres for the Cherokee Insane Asylum in Tahlequah district.

(*x*) The lots or parts of lots on which all schools, churches, and parsonages i towns are now located.

Provided, however, That in case any of the above-reserved lots or tracts of land except such as are occupied by churches and parsonages, shall at any time cease t be used for the purposes for which they have been reserved, with the improvement thereon, shall revert to the Cherokee Nation and be sold under the direction of th Secretary of the Interior and the proceeds placed to the credit of the school fund o the Cherokee Nation.

MISCELLANEOUS.

SEC. 55. The tribal government of the Cherokee Nation shall continue until March fourth, nineteen hundred and six, subject to such future legislation as Congress may deem proper.

SEC. 56. The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations prescribed by the Secretary, and the expenses of such collection shall be deducted from the funds collected: *Provided*, That any revenue collectors who may be duly appointed under Cherokee law prior to the final ratification of this agreement shall be permitted to serve out the term for which they were appointed.

SEC. 57. No funds belonging to said tribe shall be used or paid out for any purposes by any officer of the United States without the consent of the tribe, expressly given through its national council, except as herein provided.

SEC. 58. All things necessary to carry into effect the provisions herein contained not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

SEC. 59. No noncitizen renting lands from a citizen for agricultural purposes, as provided by law, whether such lands have been selected as an allotment or not, shall be required to pay any permit tax.

SEC. 60. The United States shall pay all expenses incident to survey platting, and disposition of town lots, and all allotments of lands made under the provisions of this plan of allotment, except where the town authorities may have been or may be duly authorized to survey and plat their respective towns at the expense of such towns, except when towns are authorized to survey at their own expense.

SEC. 61. If the suit which has been instituted by the Cherokee Nation, and now pending in the Supreme Court of the District of Columbia, against persons claiming to hold leases by authority of the national council of the Cherokee Nation, or otherwise, shall be finally determined against the Cherokee Nation then, in that event, the royalties due the Cherokee Nation from such persons shall be paid to the persons taking allotments on lands upon which such leases may be in operation.

SEC. 62. Any allottee taking as his allotment lands located around the Cherokee National Male Seminary, the Cherokee National Female Seminary, or Cherokee Orphan Asylum which have not been reserved from allotment as herein provided, and upon which buildings, fences, or other property of the Cherokee Nation are located, such buildings, fences, or other property shall be appraised at the true values thereof and be paid for by the allottee takingsuch lands as his allotment, and the money to be paid into the subtreasury of the United States at Saint Louis, Missouri, to the credit of the Cherokee Nation.

SEC. 63. All lands that are now or may hereafter be occupied by any railroads as rights of ways in the Cherokee Nation shall be appraised at their true values as herein provided for agricultural lands, and the railroads shall pay into the subtreasury of the United States at Saint Louis, Missouri, to the credit of the Cherokee Nation, the appraised value thereof, and thereupon title shall be given said railroads by the Cherokee Nation.

SEC. 64. All moneys to be paid to the tribe under the provisions of this plan of allotment shall be paid under the direction of the Secretary of the Interior into the Treasury of the United States to the credit of the tribe, and an itemized report thereof shall be made to the Secretary of the Interior and to the principal chief.

SEC. 65. All funds of the tribe and all moneys accruing under the provisions of this plan of allotment, when required for per capita payments, shall be paid out directly to each individual by a bonded officer of the United States under the direction of the Secretary of the Interior without unnecessary delay; and moneys paid to citizens shall not be liable to the payment of any previously contracted obligation.

SEC. 66. All deferred payments under the provisions of this plan of allotment shall constitute a lien in favor of the tribe on the property for which the debt was contracted, and if default in any annual payment is made, the lien for the payment of all purchase money remaining unpaid may thereupon be enforced in the United States court in the same manner as vendors' liens are enforced, suit therefor to be brought in the name of the principal chief for the benefit of the tribe, or, on his failure for any cause, in the name of the person appointed therefor by the court.

SEC. 67. All other liens may be in like manner enforced after the expiration of two years from the date when the amount secured thereby becomes a charge upon the property.

SEC. 68. The provisions of section thirteen of the act of Congress approved June 28, 1898, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, and no act or treaty provision inconsistent with this plan of allotment shall be in force in said nation except sections fourteen and twenty-seven

of said last-mentioned act, which shall continue in force as if this plan of allotment had not been made.

SEC. 69. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the ratification of this plan of allotment which may have lawfully been contracted and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law after the ratification of this plan of allotment and prior to the dissolution of the tribal government, such payment to be made from any funds in the United States Treasury belonging to said tribe. And all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made.

SEC. 70. The Secretary of the Interior shall make such payments at the earliest time practicable, and he shall make all needful rules and regulations to carry this provision into effect.

SEC. 71. All instruments of writing affecting lands in the Cherokee Nation which lie south of Spavinaw Creek, east of Grand River, and north of the Arkansas River, and all other instruments affecting property in said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Tahlequah; and all instruments of writing affecting lands in said nation lying north of the Arkansas River, north of Spavinaw Creek, and west of Grand River, and all other instruments affecting property in said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Vinita; and all instruments of writing affecting lands in said nation lying south of the Arkansas River, and all other instruments affecting property within said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Muskogee.

SEC. 72. Nothing herein contained shall be construed as forfeiting or abridging the right of said tribe, individual, or any number of individuals thereof to any claim that either of whom may have against the United States, or any State thereof, or the right of prosecuting, testing the right thereto for the collection in any State or United States court, the Court of Claims, or the Supreme Court of the United States, on account of any treaty stipulation, agreement, law, or otherwise with either State or the United States.

SEC. 73. This plan of allotment shall not take effect or be of any validity until ratified by the Congress of the United States, and by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following: The principal chief, shall within twenty days after the ratification by the United States, make public proclamation that the same shall be voted upon at a special election to be held for that purpose within forty days thereafter, on a certain date therein named, and he shall appoint such officers and make such other provisions as may be necessary for holding such election. The votes cast at such election shall be forthwith duly certified as required by Cherokee law, and the votes shall be counted by the Cherokee national council, if then in session, and if not in session the principal chief shall convene an extraordinary session for the purpose, in the presence of the representative duly authorized by the Secretary of the Interior and the principal chief, and said representative and the principal chief shall jointly make certificate thereof and proclamation of the result.

Passed the Senate December 14th, 1901.

(Signed in Cherokee) WOLFE COON,
President of Senate.
S. F. PARKS,
Clerk of Senate.

Concurred in by council December 16th, 1901.

M. V. BENGE,
Speaker of Council.
C. S. SHELTON,
Clerk of Council.

Approved December 18th, 1901.
T. M. BUFFINGTON,
Principal Chief Cherokee Nation.

EXECUTIVE OFFICE, CHEROKEE NATION,
Tahlequah, I. T., ——— —, *190*—.

I, T. M. Buffington, principal chief of the Cherokee Nation, do hereby certify that the foregoing is a memorial of the National Council of said Nation passed at its extra session, 1901, and approved by me in my official character on December 18, 1901, and I do hereby submit the same for the approval of the President of the United States under the provisions of the act of Congress of March 3, 1901, entitled "An act

making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1902, and for other purposes."

In witness whereof I have hereunto signed my name as principal chief of the Cherokee Nation on this the 19th day of December, 1901, and caused the great seal of the nation to be affixed.

[SEAL.]

T. M. BUFFINGTON,
Principal Chief Cherokee Nation.

Attest:
J. T. PARKS,
Executive Secretary.

EXHIBIT B.

A BILL To allot the lands of the Cherokee tribe of Indians in Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

DEFINITIONS.

1. The words "nation" and "tribe" shall each be held to refer to the Cherokee Nation or tribe of Indians in Indian Territory.
2. The words "principal chief" or "chief executive" shall be held to mean the principal chief of said tribe.
3. The words "Dawes Commission" or "Commission" shall be held to mean the United States Commission to the Five Civilized Tribes.
4. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.
5. The terms "allottable lands" or "lands allottable" shall be held to mean all the lands of the Cherokee tribe not herein reserved from allotment.
6. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for particular tracts of land.
7. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Cherokee Nation in the Indian Territory.
8. Every word in this act importing the masculine gender shall extend and be applied to females as well as males, and the use of the plural shall include also the singular, and vice versa.

APPRAISEMENT OF LANDS.

9. The lands belonging to the Cherokee tribe of Indians in Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: *Provided*, That in the determination of the value of such land consideration shall not be given to the location thereof, to any timber thereon, or to any mineral deposits contained therein, and shall be made without reference to improvements which may be located thereon.
10. The appraisement, as herein provided, shall be made by the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior.

ALLOTMENT OF LANDS.

11. There shall be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee tribe, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to one hundred acres of the average allottable land of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements.
12. For the purpose of making allotments and designating homesteads hereunder the forty-acre, or quarter of a quarter section subdivisions established by the Government survey, may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.
13. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment, land equal in value to forty acres of

the average allottable lands of the Cherokee Nation as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. During the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.

14. When the allotments as herein provided have been made to all members, the residue of the lands not herein reserved or otherwise disposed of, if any there be, shall be sold at public auction under rules and regulations to be prescribed by the President of the United States, and whenever said residue of lands shall be so sold the money derived from the sale thereof shall be paid into the Treasury of the United States to the credit of the Cherokees, and distributed per capita as are other funds of the tribe.

15. Lands allotted as herein provided shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the date of the patent, nor shall said lands be sold except as herein provided.

16. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: *Provided*, That such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Cherokee tribal government for less than its appraised value.

17. If for any reason an allotment should not be selected or a homestead designated by or on behalf of any member of the tribe, it shall be the duty of said commission to make said selection and designation.

18. In the making of allotments and in the designation of homesteads for members of said tribe, said commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in section twelve hereof.

19. It shall be unlawful after ninety days after the approval of this act for any member of the Cherokee tribe to enclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred acres of average allotable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe, and any member of said tribe found in such possession of lands, or having the same in any manner enclosed, after the expiration of ninety days after the date of the approval of this act shall be deemed guilty of a misdemeanor.

20. Any person convicted of violating any of the provisions of section nineteen of this act shall be punished by a fine of not less than one hundred dollars, shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. The United States district attorney for the district in which said nation is situated is required to see that the provisions of said section nineteen are strictly enforced, and he shall immediately after the expiration of the ninety days after the approval of this act proceed to dispossess all persons of such excessive holdings of lands and to prosecute them for so unlawfully holding the same, and the Commission to the Five Civilized Tribes shall have authority to make investigations of all violations of section nineteen and make report thereon to the United States district attorney.

21. If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to the first day of July, 1902, and before receiving his allotment of land, the lands to which such persons would have been entitled, if living, shall be allotted in his name, and shall, with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and proper time, the Dawes Commission shall designate the lands thus to be allotted.

22. Allotment certificates issued by the Dawes Commission shall be conclusive evidence of the right of an allottee to the tract of land described therein, and the United States Indian Agent for the Union Agency, shall, under the direction of the Secretary of the Interior, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to him, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.

23. Exclusive jurisdiction is hereby conferred upon the Commission to the Five

Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.

24. All Delaware Indians who are members of the Cherokee Nation, shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court, if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending, but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand and six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees, dated April 8, 1867, such lands so to remain, subject to the disposition according to such judgment as may be rendered in said cause, and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April 8, 1867, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees.

RESERVATIONS.

25. The following lands shall be reserved from the allotment of lands herein provided for:

(*a*) All lands set apart for town sites by the provisions of the act of Congress of June 28, 1898 (30 Stats., 495), the provisions of the act of Congress of May 31, 1900 (31 Stat., 221), and by the provisions of this act.

(*b*) All lands to which, upon the date of the approval of this act, any railroad company may, under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses, connected with the maintenance and operation of the railroad.

(*c*) All lands selected for town cemeteries as herein provided.

(*d*) One acre of land for each schoolhouse not included in town sites as herein provided.

(*e*) One hundred and sixty acres for Willie Halsell College at Vinita.

(*f*) Four acres for Baptist Mission school at Tahlequah.

(*g*) Four acres for Presbyterian school at Tahlequah.

(*h*) Four acres for Park Hill Mission school south of Tahlequah.

(*i*) Four acres for Elm Springs Mission school at Barren Fork.

(*j*) Forty acres for Dwight Mission school at Sallisaw.

(*k*) Four acres for Skiatook Mission near Skiatook.

(*l*) Four acres for Lutheran Mission school on Illinois River north of Tahlequah.

(*m*) Sufficient ground for burial purposes where neighborhood cemeteries are now located, not to exceed three acres each.

(*n*) One acre for each church house outside of towns.

(*o*) The square now occupied by the capitol building at Tahlequah.

(*p*) The grounds now occupied by the national jail at Tahlequah.

(*q*) The grounds now occupied by the Cherokee Advocate printing office at Tahlequah.

(*r*) Forty acres for the Cherokee Male Seminary near Tahlequah.

(*s*) Forty acres for the Cherokee Female Seminary at Tahlequah.

(*t*) One hundred and twenty acres for the Cherokee Orphan Asylum on Grand River.

(*u*) Forty acres for colored high school in Tahlequah District.

(*v*) Forty acres for the Cherokee Insane Asylum.

(*w*) Forty acres for the school for the blind, deaf, and dumb children near Fort Gibson.

(*x*) All lands which shall be segregated and reserved by the Secretary of the Interior on account of their mineral deposits, as hereinafter provided.

The acre so reserved for any church or schoolhouse in any quarter section of land shall be located in a corner of such quarter section lying adjacent to the section line thereof.

ROLL OF CITIZENSHIP.

26. The roll of citizens of the Cherokee Nation shall be made as of July, 1, 1902, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

27. The names of all persons living on the first day of July, 1902, entitled to be enrolled as provided in section 26 hereof shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, 1895, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

28. Such roll shall in all other respects be made in strict compliance with the provisions of section twenty-one of the act of Congress approved June 28, 1898 (30 Stats., 495), and the act of Congress approved May 31, 1900 (31 Stats., 221).

29. No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

30. For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as herein provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee tribe, upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Interior lists embracing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.

31. During the months of July and August, in the year 1902, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee nation on or before the first day of July, 1902, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of August, 1902.

32. No person whose name does not appear upon the roll prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in this act: *Provided*, That no allotment of land or orther tribal property shall be made to any person or to the heirs of any person whose name is on said roll and who died prior to the first day of July, 1902.

The right of such persons to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before said date, and any person or persons who may conceal the death of anyone on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided as in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Cherokee Nation of the lands, other tribal property, and proceeds so obtained.

TOWN SITES.

33. The lands which may hereafter be set aside and reserved for town sites upon the recommendation of the Dawes Commission under the provisions of the act of Congress approved May 31, 1900 (31 Stat., 221), shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and forty acres for each town site.

34. Whenever any tract of land shall be set aside by the Secretary of the Interior for town-site purposes, as provided in said act of May 25, 1900, or by the terms of this act, which is occupied at the time of such segregation by any member of the Cherokee Nation, such occupant shall be allowed to purchase any lot upon which he then has improvements other than fences, tillage, and temporary improvements, in accordance with the provisions of the act of June 28, 1898 (30 Stat., 495), or, if he so elects, the lot will be sold as hereinafter provided, and he shall be fully compensated for his improvements thereon out of the funds of the tribe arising from the sale of the town sites, under rules and regulations to be prescribed by the Secretary of the Interior, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe, and one by the occupant of the land, said board of

appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriations for surveying, laying out, platting, and selling town sites.

35. Whenever the chief executive of the Cherokee Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioners appointed by the chief executive to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

36. Such towns in the Cherokee Nation as may have a population of less than two hundred people not otherwise provided for, and which, in the judgment of the Secretary of the Interior, should be set aside as town sites, shall have their limits defined as soon as practicable after the approval of this act in the same manner as provided for other town sites under existing law.

37. All town sites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes under the provisions of the act of Congress approved May 31, 1900 (31 Stats., 221), with the additional acreage added thereto, and all town sites which may be hereafter so set aside, as well as all town sites set aside under the provisions of this act, having a population of less than two hundred, shall, after being divided into lots and blocks, and a map or plat thereof made as required by law, be sold at public auction to the highest bidder, and each lot shall be sold separately. The appraisals of said town lots shall be made as now provided by law for the valuation of improved town lots, and the purchaser of each of said town lots shall within ten days from the date of his purchase pay into the Treasury of the United States, to the credit of the Cherokee tribe, one-third of the purchase price, and the balance in two equal annual installments without interest, and when the entire sum is paid he shall be entitled to a patent for the same; and no lot shall be sold at public auction at less than its appraised value.

Provided, however, That if any lot is occupied by any member of the Cherokee Nation upon which at the time of such segregation heretofore made he had improvements other than fencing, tillage, and temporary improvements, or if any lot is so occupied and improved at the time of any segregation hereafter made, such occupant shall be allowed to purchase such lot in accordance with the provisions of the act of June 28, 1898 (30 Stat., 495), or, if he elects, the lot will be sold and he shall be fully compensated for his improvements as provided in section thirty-four hereof: *And provided further*, That when any lot sold at public auction shall have thereon improvements erected by a person claiming possessory right to such lot, said improvements shall be appraised by a committee, one member of which shall be selected by the owner of the improvements and one member by the purchaser of said lot; and in case the said committee is not able to agree upon the value of said improvements, the committee may select a third member, and in that event the determination of the majority of the committee shall control. Said committee of appraisement shall be paid such compensation for their services by the two parties in interest, share and share alike, as may be agreed upon, and the amount of said appraisement shall be paid by the purchaser of the lot to the owner of the improvements in cash within thirty days after the decision of the committee of appraisement.

38. The purchaser of any town lot may at any time pay the full amount of the purchase money, and he shall thereupon receive title therefor.

39. Any person may bid for and purchase any lot sold at public auction as herein provided.

40. The town authorities of any town site in said Cherokee Nation may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from such town, to embrace such number of acres as may be deemed necessary for such purpose. The town-site commission shall appraise the same at its true value, and the town may purchase the same within one year from the approval of the survey by paying the appraised value. If any citizen have improvements thereon, said improvements shall be appraised by said town-site commission and paid for by the town: *Provided*, That lands already laid out by tribal authorities for cemeteries shall be included in the cemeteries herein provided for without cost to the towns, and the holding of the burial lots therein now occupied for such purpose shall in no wise be disturbed: *And provided further*, That any park laid out and surveyed in any town shall be duly appraised at a fair valuation, and the inhabitants of said town shall, within one year after the approval of the survey and the appraisement of said park by the Secretary of the Interior, pay the appraised value to the proper officer for the benefit of the tribe or tribes entitled thereto.

41. The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, or other necessary public purposes for its use by paying the appraised value thereof, the same to be selected under the direction of the

department for whose use such lands are needed, and if any person have improvements thereon the same shall be appraised in like manner as other town property, and shall be paid for by the United States.

SCHOOLS.

42. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of children of Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results, said schools to be under the direct supervision of a supervisor appointed by the Secretary.

43. All teachers shall be examined by or under direction of said supervisor, and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed, but where all qualifications are equal, preference shall be given to citizens of the Cherokee Nation in such employment.

44. All moneys for carrying on the schools shall be appropriated by the Cherokee national council, not to exceed the amount of the Cherokee school fund, but if the council fail or refuse to make the necessary appropriations, the Secretary of the Interior may direct the use of sufficient amount of the school fund to pay all necessary expenses to the efficient conduct of the schools, strict account therefor to be rendered to him and the principal chief.

45. All accounts for expenditures in carrying on the schools shall be examined and approved by said supervisor, and also by the general superintendent of Indian schools in Indian Territory, before payment thereof is made.

46. The interest arising from the Cherokee orphan fund shall be used, under the direction of the Secretary of the Interior, for maintaining the Cherokee Orphan Asylum for the benefit of the Cherokee orphan children.

TITLES.

47. The Secretary of the Interior shall furnish the principal chief with blank patents necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, or when any allotment has been so ascertained and fixed that title should under the provisions of this act be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

48. All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his patent.

49. Any allottee accepting such patent shall be deemed to assent to the allotment and conveyance of all the lands of the tribe as provided in this act, and to relinquish all his right, title, and interest to the same, except in the proceeds of lands reserved from allotment.

50. The acceptance of patents for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe.

51. All patents, when so executed and approved, shall be filed in the office of the Dawes Commission, and recorded in a book provided for the purpose, until such time as Congress shall make other suitable provision for record of land titles, without expense to the grantee, and such records shall have like effect as other public records.

MINERAL LANDS.

52. Within six months after the approval of this act the Secretary of the Interior shall ascertain, so far as may seem to him practicable, what lands in the Cherokee Nation are principally valuable because of their deposits of oil, coal, asphalt, and other minerals of whatever character, including therein all lands which at the time of the approval of this act shall be covered by then existing and subsisting leases, and all lands which at the time of the approval of this act shall be covered by contracts made with the Cherokee Nation, or with individual members thereof, under the laws or customs of said nation prior to the approval of the act of June 28, 1898 (30 Stat., 495), and where said parties or their assigns have entered upon said lands under said leases or contracts prior to June 28, 1898, and produced minerals in commercial quantities, the Secretary of the Interior, as soon as practicable after ascertaining what lands are mineral, shall segregate and reserve the same from allotment.

Such segregation and reservation shall conform to the subdivisions of the Governt ment survey as nearly as may be, and the total segregation and reservation shall no exceed two hundred thousand acres.

The lands segregated and reserved as herein provided shall not be allotted to any member of the Cherokee Nation, but the improvements of any such member existing upon any of said lands, except those covered by leases and contract as above indicated, at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and said improvements shall be paid for out of any funds of the tribe in the Treasury of the United States upon the order of the Secretary of the Interior. All mineral deposits of whatever character which may be found in any lands not so segregated and reserved shall be deemed a part of the land and shall pass to the allottee or other person who may lawfully acquire title to such lands.

53. All lands segregated and reserved under the terms of section fifty-two, excepting those embraced within the limits of a town site established under said act of June 28, 1898, the act of May 31, 1900, or under this act, shall, after the expiration of two years from the date of the approval of this act and before the dissolution of the tribal government, be sold at public auction under the direction of the President of the United States, and the proceeds thereof deposited in the Treasury of the United States to the credit of said tribe and paid out per capita to the members thereof, with the other moneys belonging to said tribe, in the manner provided by law. The lands embraced within any subsisting mineral lease or contract as set forth in section fifty-two shall be separately sold, subject to such lease or contract, and the purchaser shall succeed to all the rights of the tribe or individual members making such lease or contract of every kind and character thereunder. The other mineral lands so segregated and reserved shall be sold in tracts not exceeding in area a section under the Government survey. No lease of any mineral lands shall be made after the date of the approval of this act.

54. At the expiration of two years after the approval of this act all deposits of coal and asphalt, which are in lands within the limits of any town site established under the act of June 28, 1898, or the act of Congress of May 31, 1900, or this act, and which are within the exterior limits of any lands reserved from allotment on account of their coal or asphalt deposits, as herein provided, and which are not at the time of the final ratification of this act embraced in any then existing mineral lease or contract as set forth in section fifty-two, shall be sold at public auction under the direction of the President, and the proceeds thereof disposed of as herein provided respecting the proceeds of the sale of other mineral lands.

55. Upon the recommendation of the principal chief, and where in the judgment of the President it is advantageous to the tribe so to do, the sale of any mineral lands which are herein directed to be sold may be made at any time after the expiration of six months from the date of the approval of this act without awaiting the expiration of the period of two years as hereinbefore provided.

56. The principal chief of the tribe shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser of any mineral lands so sold an appropriate patent or instrument of conveyance conveying to the purchaser the property so sold.

MISCELLANEOUS.

57. The tribal government of the Cherokee Nation shall not continue longer than March 4, 1906.

58. The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations to be prescribed by the said Secretary.

59. All things necessary to carry into effect the provisions of this act, not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

60. All funds of the tribe, and all moneys accruing under the provisions of this act, shall be paid out under the direction of the Secretary of the Interior, and when required for per capita payments shall be paid directly to each individual by an appointed officer of the United States, under the direction of the Secretary of the Interior.

61. Cherokee citizens may rent their allotments, after receiving certificates therefor, for a term not exceeding five years, under rules and regulations to be prescribed by the Secretary of the Interior, and cattle grazed on such allotments shall not be liable for any tribal tax. No cattle shall hereafter be introduced into the Cherokee Nation and grazed on lands not selected by citizens as allotments, unless per-

mission therefor has been granted by the principal chief and approved by the Secretary of the Interior, in which case the Secretary is authorized to collect from the owners of such cattle a reasonable grazing tax for the benefit of the tribe. Section twenty-one hundred and seventeen of the Revised Statutes of the United States shall not apply to Cherokee lands, and no penalties or tax already accrued under said section shall be collectible.

62. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the approval of this act which may have lawfully been contracted, and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law hereafter and prior to the dissolution of the tribal government, such payments to be made from any funds in the United States Treasury belonging to said tribe, and all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such payments at the earliest time practicable and he shall make all needed rules and regulations to carry this provision into effect.

63. Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this Act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution, or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.

64. After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee tribe as provided in this act, no contest shall be instituted against such selection, and as early thereafter as practicable, patent shall issue therefor.

65. Allotments may be selected, and homesteads designated for minors by the father or mother, if citizens, or by a guardian, or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons, and soldiers and sailors of the United States on duty outside of the Indian Territory, by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable persons akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

66. That all acts and portions of acts or treaty provisions in conflict with any of the provisions of this act, shall not be in force in the Cherokee Nation after the approval of this act.

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[PUBLIC—No. 241.]

An Act To provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITION OF WORDS EMPLOYED HEREIN.

SECTION 1. The words "nation" and "tribe" shall each be held to refer to the Cherokee Nation or tribe of Indians in Indian Territory.

SEC. 2. The words "principal chief" or "chief executive" shall be held to mean the principal chief of said tribe.

SEC. 3. The words "Dawes Commission" or "Commission" shall be held to mean the United States Commission to the Five Civilized Tribes.

SEC. 4. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.

SEC. 5. The terms "allottable lands" or "lands allottable" shall be held to mean all the lands of the Cherokee tribe not herein reserved from allotment.

SEC. 6. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for particular tracts of land.

SEC. 7. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Cherokee Nation, in the Indian Territory.

SEC. 8. Every word in this Act importing the masculine gender may extend and be applied to females as well as males, and the use of the plural may include also the singular, and vice versa.

APPRAISEMENT OF LANDS.

SEC. 9. The lands belonging to the Cherokee tribe of Indians in Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: *Provided*, That in the determination of the value of such land consideration shall not be given to the location thereof, to any timber thereon, or to any mineral deposits contained therein, and shall be made without reference to improvements which may be located thereon.

SEC. 10. The appraisement, as herein provided, shall be made by the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior.

ALLOTMENT OF LANDS.

SEC. 11. There shall be allotted by the Commission to the Five Civilized Tribes and to each citizen of the Cherokee tribe, as soon as practicable after the approval by the Secretary of the Interior of his

enrollment as herein provided, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements.

SEC. 12. For the purpose of making allotments and designating homesteads hereunder, the forty-acre, or quarter of a quarter section, subdivision established by the Government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

SEC. 13. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to forty acres of the average allotable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. During the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.

SEC. 14. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this Act.

SEC. 15. All lands allotted to the members of said tribe, except such land as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent.

SEC. 16. If for any reason an allotment should not be selected or a homestead designated by or on behalf of any member of the tribe, it shall be the duty of said Commission to make said selection and designation.

SEC. 17. In the making of allotments and in the designation of homesteads for members of said tribe, said Commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in section twelve hereof.

SEC. 18. It shall be unlawful after ninety days after the ratification of this Act by the Cherokees for any member of the Cherokee tribe to inclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred and ten acres of average allottable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe; and any member of said tribe found in such possession of lands, or having the same in any manner inclosed, after the expiration of ninety days after the date of the ratification of this Act shall be deemed guilty of a misdemeanor.

SEC. 19. Any person convicted of violating any of the provisions of section eighteen of this Act shall be punished by a fine of not less than one hundred dollars, shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. The United States district attorney for the northern district is required to see that the provisions of said section eighteen are strictly enforced, and he shall immediately,

after the expiration of the ninety days after the ratification of this Act, proceed to dispossess all persons of such excessive holdings of lands and to prosecute them for so unlawfully holding the same, and the Commission to the Five Civilized Tribes shall have authority to make investigations of all violations of section eighteen and make report thereon to the United States district attorney.

SEC. 20. If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to the first day of September, nineteen hundred and two, and before receiving his allotment, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and proper time, the Dawes Commission shall designate the lands thus to be allotted.

SEC. 21. Allotment certificates issued by the Dawes Commission shall be conclusive evidence of the right of an allottee to the tract of land described therein, and the United States Indian agent for the Union Agency shall, under the direction of the Secretary of the Interior, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to him, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.

SEC. 22. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.

SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this Act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now

pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable.

RESERVATIONS.

SEC. 24. The following lands shall be reserved from the allotment of lands herein provided for:

(a) All lands set apart for town sites by the provisions of the Act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), the provisions of the Act of Congress of May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), and by the provisions of this Act.

(b) All lands to which, upon the date of the ratification of this Act, any railroad company may, under any treaty or Act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses only, connected with the maintenance and operation of the railroad.

(c) All lands selected for town cemeteries not to exceed twenty acres each.

(d) One acre of land for each Cherokee schoolhouse not included in town sites or herein otherwise provided for.

(e) Four acres for Willie Halsell College at Vinita.

(f) Four acres for Baptist Mission school at Tahlequah.

(g) Four acres for Presbyterian school at Tahlequah.

(h) Four acres for Park Hill Mission school south of Tahlequah.

(i) Four acres for Elm Springs Mission school at Barren Fork.

(j) Four acres for Dwight Mission school at Sallisaw.

(k) Four acres for Skiatook Mission near Skiatook.

(l) Four acres for Lutheran Mission school on Illinois River north of Tahlequah.

(m) Sufficient ground for burial purposes where neighborhood cemeteries are now located, not to exceed three acres each.

(n) One acre for each church house outside of towns.

(o) The square now occupied by the capitol building at Tahlequah.

(p) The grounds now occupied by the national jail at Tahlequah.

(q) The grounds now occupied by the Cherokee Advocate printing office at Tahlequah.

(r) Forty acres for the Cherokee Male Seminary near Tahlequah.

(s) Forty acres for the Cherokee Female Seminary at Tahlequah.

(t) One hundred and twenty acres for the Cherokee Orphan Asylum on Grand River.

(u) Forty acres for colored high school in Tahlequah district.

(v) Forty acres for the Cherokee Insane Asylum.

(w) Four acres for the school for blind, deaf, and dumb children near Fort Gibson.

The acre so reserved for any church or schoolhouse in any quarter section of land shall be located where practicable in a corner of such quarter section adjacent to the section lines thereof.

Provided, That the Methodist Episcopal Church South may, within twelve months after the ratification of this Act, pay ten dollars per acre for the one hundred and sixty acres of land adjacent to the town of Vinita, and heretofore set apart by act of the Cherokee national council for the use of said church for missionary and educational purposes, and now occupied by Willie Halsell College (formerly Galloway

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College), and shall thereupon receive title thereto; but if said church fail so to do it may continue to occupy said one hundred and sixty acres of land as long as it uses same for the purposes aforesaid.

Any other school or college in the Cherokee Nation which claims to be entitled under the law to a greater number of acres than is set apart for said school or college by section twenty-four of this Act may have the number of acres to which it is entitled by law. The trustees of such school or college shall, within sixty days after the ratification of this Act, make application to the Secretary of the Interior for the number of acres to which such school or college claims to be entitled, and if the Secretary of the Interior shall find that such school or college is, under the laws and treaties of the Cherokee Nation in force prior to the ratification of this Act, entitled to a greater number of acres of land than is provided for in this Act, he shall so determine and his decision shall be final. The amount so found by the Secretary of the Interior shall be set apart for the use of such college or school as long as the same may be used for missionary and educational purposes: *Provided*, That the trustees of such school or college shall pay ten dollars per acre for the number of acres so found by the Secretary of the Interior and which have been heretofore set apart by act of the Cherokee national council for use of such school or college for missionary or educational purposes, and upon the payment of such sum within sixty days after the decision of the Secretary of the Interior said college or school may receive a title to such land.

ROLL OF CITIZENSHIP.

SEC. 25. The roll of citizens of the Cherokee Nation shall be made as of September first, nineteen hundred and two, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

SEC. 26. The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in section twenty-five hereof, shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, eighteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

SEC. 27. Such rolls shall in all other respects be made in strict compliance with the provisions of section twenty-one of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), and the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one).

SEC. 28. No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

SEC. 29. For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as herein provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary

of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee tribe, upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Interior lists embracing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.

SEC. 30. During the months of September and October, in the year nineteen hundred and two, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee Nation on or before the first day of September, nineteen hundred and two, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of October, nineteen hundred and two.

SEC. 31. No person whose name does not appear upon the roll prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in this Act: *Provided*, That no allotment of land or other tribal property shall be made to any person, or to the heirs of any person, whose name is on said roll and who died prior to the first day of September, nineteen hundred and two. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before said date, and any person or persons who may conceal the death of anyone on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Cherokee Nation of the lands, other tribal property, and proceeds so obtained.

SCHOOLS.

SEC. 32. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of children of Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results; said schools to be under the supervision of a supervisor appointed by the Secretary and a school board elected by the national council.

SEC. 33. All teachers shall be examined by said supervisor, and said school board and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed; but where all qualifications are equal, preference shall be given to citizens of the Cherokee Nation in such employment.

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SEC. 34. All moneys for carrying on the schools shall be appropriated by the Cherokee national council, not to exceed the amount of the Cherokee school fund; but if the council fail or refuse to make the necessary appropriations, the Secretary of the Interior may direct the use of a sufficient amount of the school fund to pay all necessary expenses for the efficient conduct of the schools, strict account therefor to be rendered to him and the principal chief.

SEC. 35. All accounts for expenditures in carrying on the schools shall be examined and approved by said supervisor, and also by the general superintendent of Indian schools in the Indian Territory, before payment thereof is made.

SEC. 36. The interest arising from the Cherokee orphan fund shall be used, under the direction of the Secretary of the Interior, for maintaining the Cherokee Orphan Asylum for the benefit of the Cherokee orphan children.

ROADS.

SEC. 37. Public highways or roads two rods in width, being one rod on each side of the section line, may be established along all section lines without any compensation being paid therefor, and all allottees, purchasers, and others shall take the title to such lands subject to this provision; and public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues and to be paid by the Cherokee Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid for in the same manner.

TOWN SITES.

SEC. 38. The lands which may hereafter be set aside and reserved for town sites upon the recommendation of the Dawes Commission under the provisions of the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty one), shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and forty acres for each town site.

SEC. 39. Whenever any tract of land shall be set aside by the Secretary of the Interior for town-site purposes, as provided in said Act of May thirty-first, nineteen hundred, or by the terms of this Act, which is occupied at the time of such segregation by any member of the Cherokee Nation, such occupant shall be allowed to purchase any lot upon which he then has improvements other than fences, tillage, and temporary improvements, in accordance with the provisions of the Act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), or, if he so elects, the lot will be sold under rules and regulations to be prescribed by the Secretary of the Interior, and he shall be fully compensated for his improvements thereon out of the funds of the tribe arising from the sale of the town sites, the value of such improvements to be determined by a board of appraisers, one member of which shall be

appointed by the Secretary of the Interior, one by the chief executive of the tribe, and one by the occupant of the land, said board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriations for surveying, laying out, platting, and selling town sites.

SEC. 40. All town sites which may hereafter be set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), with the additional acreage added thereto, as well as all town sites set aside under the provisions of this Act having a population of less than two hundred, shall be surveyed, laid out, platted, appraised, and disposed of in like manner, and with like preference rights accorded to owners of improvements as other town sites in the Cherokee Nation are surveyed, laid out, platted, appraised, and disposed of under the Act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), as modified or supplemented by the Act of May thirty-first, nineteen hundred: *Provided*, That as to the town sites set aside as aforesaid the owner of the improvements shall be required to pay the full appraised value of the lot instead of the percentage named in said Act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five).

SEC. 41. Any person being in possession or having the right to the possession of any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and owning improvements thereon, other than temporary buildings, fencing, or tillage, shall have the right to purchase the same at one-fourth of the appraised value thereof.

SEC. 42. Any person being in possession of, or having the right to the possession of, any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the Act of Congress, approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupany of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and not having any improvements thereon, shall have the right to purchase the same at one-half of the appraised value thereof.

SEC. 43. Any citizen in rightful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase same by paying one-half the appraised value thereof: *Provided*, That any other person in undisputed possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase such lot by paying the appraised value thereof.

SEC. 44. All lots not having thereon improvements other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within

twelve months after appraisement, under the direction of the Secretary of the Interior, after due advertisement, at public auction, to the highest bidder, at not less than their appraised value.

SEC. 45. When the appraisement of any town lot is made and approved, the town-site commission shall notify the claimant thereof of the amount of appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money he shall pay in three equal annual installments without interest: but if the claimant of any such lot fail to purchase same or make the first and second payments aforesaid or make any other payment within the time specified, the lot and improvements shall be sold at public auction to the highest bidder, under the direction of the Secretary of the Interior, at a price not less than its appraised value.

SEC. 46. When any improved lot shall be sold at public auction because of the failure of the person owning improvements thereon to purchase same within the time allowed in said Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), said improvements shall be appraised by a committee, one member of which shall be selected by the owner of the improvements and one member by the purchaser of said lot; and in case the said committee is not able to agree upon the value of said improvements, the committee may select a third member, and in that event the determination of the majority of the committee shall control. Said committee of appraisement shall be paid such compensation for their services by the two parties in interest, share and share alike, as may be agreed upon, and the amount of said appraisement shall be paid by the purchaser of the lot to the owner of the improvements in cash within thirty days after the decision of the committee of appraisement.

SEC. 47. The purchaser of any unimproved town lot sold at public auction shall pay twenty-five per centum of the purchase money at the time of the sale, and within four months thereafter he shall pay twenty-five per centum additional, and the remainder of the purchase money he shall pay in two equal annual installments without interest.

SEC. 48. Such towns in the Cherokee Nation as may have a population of less than two hundred people not otherwise provided for, and which, in the judgment of the Secretary of the Interior, should be set aside as town sites, shall have their limits defined as soon as practicable after the approval of this Act in the same manner as provided for other town sites.

SEC. 49. The town authorities of any town site in said Cherokee Nation may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from said town, to embrace such number of acres as may be deemed necessary for such purpose. The town-site commission shall appraise the same at its true value, and the town may purchase the same within one year from the approval of the survey by paying the appraised value. If any citizen have improvements thereon, said improvements shall be appraised by said town-site commission and paid for by the town: *Provided*, That lands already laid out by tribal authorities for cemeteries shall be included in the cemeteries herein provided for without cost to the towns, and the holdings of the burial lots therein now occupied for

such purpose shall in no wise be disturbed: *And provided further*, That any park laid out and surveyed in any town shall be duly appraised at a fair valuation, and the inhabitants of said town shall, within one year after the approval of the survey and the appraisement of said park by the Secretary of the Interior, pay the appraised value to the proper officer for the benefit of the tribe.

SEC. 50. The United States shall pay all expenses incident to surveying, platting, and disposition of town lots, and all allotments of lands made under the provisions of this plan of allotment, except where the town authorities may have been or may be duly authorized to survey and plat their respective towns at the expense of such towns.

SEC. 51. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided.

SEC. 52. If the purchaser of any town lot fail to make payment of any sum when due, the same shall thereafter bear six per centum interest per annum until paid.

SEC. 53. All lots or parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be conveyed gratuitously to the churches to which such improvements belong, and if such churches have inclosed other adjoining lots actually necessary for their use, they may purchase the same by paying the appraised value thereof.

SEC. 54. Whenever the chief executive of the Cherokee Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioners appointed by the chief executive to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

SEC. 55. The purchaser of any town lot may at any time pay the full amount of the purchase money, and he shall thereupon receive title therefor.

SEC. 56. Any person may bid for and purchase any lot sold at public auction as herein provided.

SEC. 57. The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, or other necessary public purposes for its use by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such lands are needed, and if any person have improvements thereon the same shall be appraised in like manner as other town property, and shall be paid for by the United States.

TITLES.

SEC. 58. The Secretary of the Interior shall furnish the principal chief with blank patents necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, or when any allotment has been so ascertained and fixed that title should under the provisions of this Act be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

SEC. 59. All conveyances shall be approved by the Secretary of the

Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his patent.

SEC. 60. Any allottee accepting such patent shall be deemed to assent to the allotment and conveyance of all the lands of the tribe as provided in this Act, and to relinquish all his right, title, and interest to the same, except in the proceeds of lands reserved from allotment.

SEC. 61. The acceptance of patents for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe.

SEC. 62. All patents, when so executed and approved, shall be filed in the office of the Dawes Commission, and recorded in a book provided for the purpose, until such time as Congress shall make other suitable provision for record of land titles, without expense to the grantee, and such records shall have like effect as other public records.

MISCELLANEOUS.

SEC. 63. The tribal government of the Cherokee Nation shall not continue longer than March fourth, nineteen hundred and six.

SEC. 64. The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations to be prescribed by the said Secretary.

SEC. 65. All things necessary to carry into effect the provisions of this Act, not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

SEC. 66. All funds of the tribe, and all moneys accruing under the provisions of this Act, shall be paid out under the direction of the Secretary of the Interior, and when required for per capita payments shall be paid directly to each individual by an appointed officer of the United States, under the direction of the Secretary of the Interior.

SEC. 67. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the ratification of this Act which may have lawfully been contracted, and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law hereafter and prior to the dissolution of the tribal government, such payments to be made from any funds in the United States Treasury belonging to said tribe, and all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such payments at the earliest time practicable and he shall make all needed rules and regulations to carry this provision into effect.

SEC. 68. Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this Act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution,

or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.

SEC. 69. After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee tribe as provided in this Act, no contest shall be instituted against such selection, and as early thereafter as practicable patent shall issue therefor.

SEC. 70. Allotments may be selected and homesteads designated for minors by the father or mother, if citizens, or by a guardian, or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons, and soldiers and sailors of the United States on duty outside of the Indian Territory, by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable persons akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

SEC. 71. Any allottee taking as his allotment lands located around the Cherokee National Male Seminary, the Cherokee National Female Seminary, or Cherokee Orphan Asylum which have not been reserved from allotment as herein provided, and upon which buildings, fences, or other property of the Cherokee Nation are located, such buildings, fences, or other property shall be appraised at the true value thereof and be paid for by the allottee taking such lands as his allotment, and the money to be paid into the Treasury of the United States to the credit of the Cherokee Nation.

SEC. 72. Cherokee citizens may rent their allotments when selected for a term not to exceed one year for grazing purposes only, and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same; but leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes and for mineral purposes may also be made with the approval of the Secretary of the Interior and not otherwise. Any agreement or lease of any kind or character violative of this section shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotments shall not be liable to any tribal tax, but when cattle are introduced into the Cherokee Nation and grazed on lands not selected as allotments by citizens the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section twenty-one hundred and seventeen of the Revised Statutes of the United States shall not hereafter apply to Cherokee lands.

SEC. 73. The provisions of section thirteen of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An Act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, and no Act of Congress or treaty provision inconsistent with this agreement shall be in force in said Nation except sections fourteen and twenty-seven of said last-mentioned Act, which shall continue in force as if this agreement had not been made.

SEC. 74. This Act shall not take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following:

SEC. 75. The principal chief shall, within ten days after the passage of this Act by Congress, make public proclamation that the same shall be voted upon at a special election to be held for that purpose within thirty days thereafter, on a certain date therein named, and he shall appoint such officers and make such other provisions as may be necessary for holding such election. The votes cast at such election shall be forthwith duly certified as required by Cherokee law, and the votes shall be counted by the Cherokee national council, if then in session, and if not in session the principal chief shall convene an extraordinary session for the purpose, in the presence of a member of the Commission to the Five Civilized Tribes, and said member and the principal chief shall jointly make certificate thereof and proclamation of the result, and transmit the same to the President of the United States.

Approved, July 1, 1902.